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# FEDERAL REGISTER

Vol. 78 Monday,

No. 189 September 30, 2013

Pages 59775–60176

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.

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1218

**[Document Number AMS–FV–12–0062]**

## Blueberry Promotion, Research and Information Order; Assessment Rate Increase

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Blueberry Promotion, Research and Information Order (Order) to increase the assessment rate from $12 to $18 per ton (an increase of $0.003 per pound). The Order is administered by the U.S. Highbush Blueberry Council (USHBC) with oversight by the U.S. Department of Agriculture (USDA). Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds will allow the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand will help move the growing supply of blueberries, which will benefit producers and consumers.

**DATES:** *Effective Date:* January 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Research and Promotion Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon, 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Order (7 CFR part 1218). 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 will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

### Executive Order 12988

This rule 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 rule amends the Order to increase the assessment rate from $12 to $18 per ton (an increase of $0.003 per pound). The Order is administered by the USHBC with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds will enable the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand will help move the growing supply of blueberries, which will benefit producers and consumers. This action was unanimously recommended by the USHBC.

The Order specifies that the funds to cover the USHBC's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments and from other funds available to the USHBC. First handlers are responsible for collecting and submitting reports and producer assessments to the USHBC. Handlers must also maintain records necessary to verify their reports. Importers are responsible for paying assessments to the USHBC on highbush blueberries imported into the United States through U.S. Customs and Border Protection (Customs). The Order also provides for two exemptions. Producers and importers who produce or import less than 2,000 pounds of blueberries annually, and producers and importers of 100 percent organic blueberries are exempt from the payment of assessments.

Section 1218.52(c) of the Order specifies that assessments shall be levied at a rate of $12 per ton on all highbush blueberries. The assessment rate may be modified with the approval of the Secretary.

The $12 per ton assessment rate has been in effect since the Order's inception in 2000. The USHBC's fiscal year runs from January 1 through December 31. USHBC expenditures have ranged from $1,522,519 in 2004 to $3,931,296 in 2012. Expenditures for health and nutrition research have ranged from $113,880 in 2004 (7.5 percent of total expenses) to $668,059 in 2011/2012 (17.0 percent of total expenses).

USHBC expenditures for health messaging and promotion activities

have ranged from $920,020 in 2004 (60.4 percent of total expenses) to $2,820,817 in 2012 (71.8 percent of total expenses). Pursuant to section 1218.50(i) of the Order, administrative expenditures have been under 15 percent of total expenses annually.

USHBC assessment income has ranged from $1,435,989 in 2004 ($1,080,230 in domestic assessments and $355,759 in import assessments) to $4,051,836 in 2012 ($2,434,646 in domestic assessments and $1,601,966 in import assessments). Additionally, pursuant to section 1218.50(j) of the Order, the USHBC maintains a monetary reserve with funds that do not exceed one fiscal period's budget.

**USHBC 2012 Recommendation**

The USHBC met on October 5, 2012, and unanimously recommended increasing its assessment rate from $12 to $18 per ton ($0.006 to $0.009 per pound). This equates to an increase of $6 per ton, or $0.003 per pound. Additional funds would enable the USHBC to expand its health research activities and promotional efforts. Since the program's inception, the USHBC has funded several health and nutrition research projects, many of them laboratory studies. USHBC research has shown possibilities relating to various health issues, including cardiovascular health and cancer. However, most of these preliminary findings have been done under laboratory conditions. Additional funds will allow the USHBC to incorporate specific areas of research into expanded clinical (human) trials. Clinical trials are important for the industry to be able to make health claims according to the Federal Trade Commission (FTC) and the Food and Drug Administration (FDA) requirements for the advertising of food.

The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand will help move the growing supply of blueberries. Worldwide highbush blueberry production has grown from 393 million pounds in 2005 to 753 million pounds in 2010. Production is expected to increase to 1 billion pounds in 2013 and to nearly 1.4 billion pounds by 2015.[1] World highbush blueberry acreage grew from approximately 50,000 acres in 1995 to over 190,000 acres in 2010.[2] North American highbush blueberry acreage increased by over 55 percent from 71,075 acres in 2005 to 110,290 acres in 2010.[3]

With highbush blueberry production expected to increase more than 38 percent by 2015, the USHBC hopes to increase consumption among existing blueberry consumers and to attract new blueberry users. Per capita consumption of blueberries increased from 15.7 ounces in 2000 to 31.4 ounces in 2009.[4] According to the North American Blueberry Council, U.S. per capita consumption is now estimated at 36.2 ounces. In order to maintain a balance between supply and demand, a 38 percent increase in per capita consumption would equate to a level of 50 ounces per person by 2015.

At the $18 per ton assessment rate and assessable tonnage ranging from 350,000 to 500,000 tons (700 million to 1 billion pounds), assessment income could range from $6.3 million to $9 million annually. As an example, if 15 percent of the budget was allocated to health and nutrition research and 60 percent were allocated to promotion, funds available for health and nutrition research could range from $945,000 to $1.35 million annually and funds available for health messaging and promotion could range from $3.78 million to $5.4 million annually.

In light of the need to allocate more funds towards health research activities and continue to build demand for blueberries, the USHBC recommended increasing the assessment rate under the Order from $12 to $18 per ton (or by $0.003 per pound). Section 1218.52(c) of the Order is amended accordingly. Changes are also made to section 1218.52(d)(2) to update the listed Harmonized Tariff Schedule of the United States (HTSUS) numbers; this change is administrative in nature and has no impact on the assessment rate.

**Final 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 this 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 (first handlers and importers) as those having annual receipts of no more than $7.0 million.

There are approximately 2,000 domestic producers, 78 first handlers and 194 importers of highbush blueberries covered under the program. Dividing the highbush blueberry crop value for 2012 reported by the National Agricultural Statistics Service (NASS) of $781,808,000[5] by the number of producers (2,000) yields an average annual producer revenue estimate of $390,904. It is estimated that in 2012, about 68 percent of the first handlers shipped under $7 million worth of highbush blueberries. Based on 2012 Customs data, it is estimated that 90 percent of the importers shipped under $7 million worth of highbush blueberries. Based on the foregoing, the majority of producers, first handlers and importers may be classified as small entities.

Regarding value of the commodity, as mentioned above, based on 2012 NASS data, the value of the domestic highbush blueberry crop was about $782 million. According to Customs data, the value of 2012 imports was about $515 million.

This rule amends section 1218.52(c) of the Order to increase the assessment rate from $12 to $18 per ton (an increase of $0.003 per pound). The Order is administered by the USHBC with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds will enable the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand. Increasing demand will help move the growing supply of blueberries, which will benefit producers and consumers. This rule also updates the HTSUS numbers listed in section 1218.52(d)(2). Authority for this action is provided in section 1218.52(c) of the Order and section 517 of the 1996 Act.

Regarding the economic impact of this rule on affected entities, this action increases the assessment obligation on domestic producers and importers. While assessments impose additional costs on producers and importers, the costs are minimal and uniform on all.

[1] Brazelton, C., World Blueberry Acreage & Production, 2011, Brazelton Ag Consulting, p. 49.

[2] Brazelton, World Blueberry Acreage & Production, p. 43.

[3] Brazelton, World Blueberry Acreage & Production, p. 42.

[4] Kaiser, Henry M., An Economic Analysis of Domestic Market Impacts of the U.S. Highbush Blueberry Council, 2010, Cornell University, p. 3.

[5] Noncitrus Fruits and Nuts 2012 Summary, January 2013, USDA, National Agricultural Statistics Service, p. 10.

The costs are also offset by the benefits derived from the operation of the program. It is estimated that 1,857 producers and 173 importers pay assessments under the program.

There have been two economic studies conducted since the Order's inception that evaluated the effectiveness of the USHBC's promotion program. The studies were conducted by Dr. Harry M. Kaiser at Cornell University in 2005 and 2010 and are both titled ''An Economic Analysis of Domestic Market Implications of the U.S. Highbush Blueberry Council.'' These studies may be obtained from Maureen Pello at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section. The 2005 study evaluated the program from 2001–2004 and the 2010 study evaluated the program from 2001–2009. The purpose of the research was twofold: (1) To determine the domestic market implications of the USHBC's promotion program and (2) to complete a benefit-cost ratio (rate of return) for the promotion activities conducted by the USHBC. The impact of the USHBC's export marketing activities was not evaluated because most of the USHBC's marketing budget has been invested in the United States (about 90 percent).

To assess the impact of the USHBC's domestic promotion activities on blueberry sales (a measure of demand), an econometric demand model was developed for blueberry sales in the United States. The model allowed the impact of the USHBC's generic promotion activities to be estimated while taking into account the impact of other factors that influence demand. These other factors include the price of blueberries, the price of blueberry substitutes, population, and consumer taste and preferences.[6] The research shows that the USHBC's promotion activities increased total blueberry sales by 441 million pounds in total, or 49 million pounds per year from 2001 through 2009. This represents an annual increase in blueberry sales of 12.3 percent. Thus, the promotional spending by the USHBC has a positive effect on domestic highbush blueberry demand.

The results also indicate that generic blueberry promotion by the USHBC has had a positive impact on the blueberry producers' price. Specifically, from 2001 to 2009, the average increase in price ranged from 14 cents per pound in the case of the least elastic supply response to 5 cents per pound in the case of the most elastic supply response.[7] The average impact over all supply responses was 8.4 cents per pound. In other words, had there been no generic blueberry promotion by the USHBC, the average producers' price would have been 8.4 cents per pound, or 7.2 percent lower than it was from 2001 through 2009.

The studies also show that USHBC promotion efforts have had a positive impact on producer surplus (i.e., producer profits) from 2001 through 2009. The average increase in producer surplus due to generic blueberry promotion by the USHBC ranged from $5.4 million per year, in the case of the least elastic supply response, to $1.9 million per year, in the case of the most elastic supply response. The average increase in producer surplus over all supply responses was $3.2 million per year. Thus, the studies concluded that the domestic promotion efforts of the USHBC have had a positive impact on producer profits since 2001.

An average benefit-cost ratio (BCR) for the USHBC's generic promotion activities was also computed. The BCR measures the net benefits of the program, which is equal to the gain in producer surplus divided by the cost of the marketing program. The BCR exceeded 1.0 for every supply response considered in Dr. Kaiser's study.[8] For the least elastic supply response, the average BCR was 15.41. This implies that, on average from 2001–2009, the benefits of the USHBC promotion program has been over 15 times greater than the costs. At the opposite end of the spectrum in the supply response, the average BCR was computed to be 5.36, implying that the benefits of the USHBC were over five times greater than the costs. Given the wide range of supply responses considered in the analysis, and the fact that the BCR was above 1.0 in all cases, there is significant evidence that the USHBC's promotion programs have been profitable for the domestic blueberry industry. The average BCR over all supply responses was 9.12 (i.e., the benefits of the promotion activities of the USHBC exceeded the costs by nine-fold).

To calculate the percentage of producer revenue represented by the assessment rate, the $18 per ton ($0.009 per pound) assessment rate is divided by the average producer price. According to the NASS, the average producer price ranged from $1.85 per pound in 2011 ($2.14 per pound for fresh and $1.28 per pound for processed) to $1.69 per pound in 2012 ($2.19 per pound for fresh and $0.923 per pound for processed).[9] Thus, the assessment rate as a percentage of producer price could range from 0.486 to 0.532 percent (or from 0.420 to 0.411 percent for fresh and from 0.703 to 0.975 percent for processed).

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 0581–0093. This rule does not change the information collection and recordkeeping requirements previously approved and imposes no additional reporting and recordkeeping burden on blueberry producers, first handlers and importers.

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 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 alternatives, the USHBC has been considering an increase in the assessment rate for the past few years. The USHBC reviewed rates ranging from maintaining the status quo at $12 per ton to doubling the rate to $24 per ton. In 2009, the USHBC recommended increasing the rate to $24 per ton. Two members opposed the increase because a rate of $18 per ton had been discussed at previous meetings and communicated to producers. USDA published a proposed rule for public comment in July 2009 (74 FR 36955; July 27, 2009) and ultimately withdrew the proposed rule in February 2010 based on the comments received (75 FR 7985; February 23, 2010).

Since that time, the USHBC and its committees have continued to discuss the need to increase the assessment rate. USHBC representatives have met with various producer associations and discussed this issue with their members

[6] The econometric model used statistical methods with time series data to measure how strongly the various blueberry demand factors are correlated with sales in the United States.

[7] Price elasticity of supply is a measure used in economics to show the responsiveness, or elasticity, of the quantity supplied/produced of a good or service to a change in price. When the coefficient is less than one, the supply can be described as inelastic. When the coefficient is greater than one, the supply can be described as elastic.

[8] Kaiser, An Economic Analysis, 2010, p. 24.

[9] Noncitrus Fruits and Nuts, p. 35.

as well as with importers. Ultimately the USHBC unanimously recommended increasing the rate to $18 per ton at its October 2012 meeting.

A proposed rule concerning this action was published in the **Federal Register** on May 20, 2013 (78 FR 29258). USDA mailed copies of the rule to all known highbush blueberry producers and importers of record. The USHBC included notifications about the proposed rule in its newsletters and also mailed related information to producers and importers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending July 19, 2013, was provided to allow interested persons to submit comments.

**Analysis of Comments**

One hundred and sixty eight comments were received in response to the proposed rule; 137 supported the increase (119 were a form letter), 29 were opposed and 2 commented without taking a position on the action. The comments are addressed in the following paragraphs.

*Comments in Support*

The 137 comments which supported increasing the assessment rate stated that additional funds would allow the USHBC to expand its promotion and health research efforts at a time when supplies are dramatically increasing. According to the commenters, North American highbush blueberry acreage has increased from 71,075 acres in 2005 to about 123,635 acres in 2012, a 74 percent increase in seven years. Newly planted acres and enhancement of existing acres has led to successive records in North American highbush blueberry production, which was about 589 million pounds in 2012, a 93 percent increase over the estimated 305 million pounds produced in 2005. Production could reach 735 million pounds by 2015. The commenters stated that, with the increase in supply, there is a need to significantly increase domestic per capita consumption from its current level of about 36 ounces per person to a projected 50 ounces per person, a 38 percent increase.

The commenters stated that additional funds would allow the USHBC to expand its health research efforts and move to more extensive human clinical trials. Funds would also allow for continued education about blueberries and to elevate awareness and maintain consumer confidence. One commenter supported doubling the assessment rate.

*Comments Opposed*

Twenty-nine comments received were opposed to increasing the assessment rate. Eleven commenters argued that increasing the assessment rate is not needed because the increase in blueberry supply will automatically bring additional funds to the USHBC to support its activities. USDA concurs that the current assessment rate of $12 per ton on the level of production over the next few years will increase USHBC income. At the $12 per ton rate and assessable tonnage ranging from 350,000 to 500,000 tons (700 million to 1 billion pounds), assessment income would range from $4.2 million to $6 million annually. While higher assessable volumes compute to more USHBC income, maintaining the $12 per assessment rate will not generate the amount of money necessary to fund expensive human clinical trials and conduct promotion activities needed to continue to build demand to move the growing supply of blueberries.

Three commenters argued that a better use of assessment funds would be to study challenges like the spotted wing drosophila (SWD) and other industry problems. While the majority of USHBC funds are used for health research and promotion, the USHBC does invest in other areas. For example, the USHBC's Good Practices Committee is tasked with educating growers and handlers about best practices regarding food production and is reviewing issues like the SWD. In an effort to explore cost savings measures for the industry, the USHBC recently funded a research project related to the mechanical harvesting of blueberries. Thus, the USHBC does address other issues, provided they are within the scope of the Order's authority.

Four commenters argued that an assessment rate increase would hurt small growers. One commenter recommended that the rate be increased only for large growers, as an example, the top 10 percent by acreage or something similar. Section 1218.53(a) of the Order in fact provides that small growers who produce less than 2,000 pounds of blueberries annually are exempt from the payment of assessments. USDA reviewed data for the top 10 percent of growers by acreage and concluded that not enough assessment income would be generated for the USHBC to fund expanded human clinical trials and conduct promotion activities needed to build demand and move the growing supply of blueberries. While the increased assessment rate will impose an additional cost on growers, it is estimated to be less than 1 percent of the producer price.

Additionally, the two economic studies by Dr. Kaiser cited earlier in this rule have indicated that generic blueberry promotion by the USHBC has had a positive impact on producer prices. Specifically, had there been no generic blueberry promotion by the USHBC, the average producers' price would have been 8.4 cents per pound, or 7.2 percent lower than it was from 2001 through 2009.

One commenter expressed concern that the USHBC spends most of its promotion funds on the prepared foods industry, baking, catering, restaurant services where blueberry alternatives are accepted practices due to a lack of demand and education of the consumer. The USHBC allocates funds to several promotion areas. In 2013, the USHBC budgeted $2.505 million for market promotion and publicity. Of that $2.505 million, $1.67 million (or almost 67 percent) is for consumer/food service publicity, $400,000 is for food manufacturing publicity, and $325,000 is for export market promotion. Thus, a significant portion of the USHBC's program targets consumers.

Two commenters expressed concern that the USHBC does not actively promote U.S. grown blueberries but rather blueberries in general. Some commenters also argued that U.S. growers are unfairly assessed for the promotion of poor quality imports. Under the Order, U.S. growers as well as importers of highbush blueberries must pay assessments. Over one-third of the USHBC's assessments are derived from imports. Thus, with both U.S. growers and importers paying into the program, promotion campaigns must be designed to benefit all blueberries.

One commenter argued that the USHBC is a bureaucracy that should be cut and that it gouges the U.S. tax payer and growers. Another commenter also expressed concern about costs associated with USHBC meetings. Research and promotion programs overseen by USDA are self-help programs funded by their respective industries and do not receive taxpayer funds. While the increased assessment rate will impose an additional cost on growers, it is estimated to be less than 1 percent of the producer price.

Regarding USHBC meetings, the USHBC holds two meetings per year, one in a blueberry producing area which allows industry members across the country to attend the meeting and the second whenever possible near an airport hub to limit travel costs. Travel costs are considered administrative and section 1218.50(i) of the Order limits

administrative costs to 15 percent of a fiscal year's available income. In 2012, the USHBC's administrative costs were 7.46 percent of available income, much lower than the Order's threshold.

No changes have been made to the proposed rule based on these opposing comments.

*Other Comments*

Two comments were received that did not take a position on the proposed assessment rate increase. One commenter stated that she supports promoting blueberries. Another commenter asked about the amount of funds used for administration versus promotion, hoping that at least 75 percent of the funds are used for promotion, research and information projects. As previously mentioned, section 1218.50(i) limits the funds that the USHBC can spend for administration to 15 percent of available income for the year. In 2012, the USHBC's administrative costs were 7.46 percent of available income, much lower than the Order's threshold. USHBC 2012 actual program expenses were almost 80 percent of its total expenditures.

After consideration of all relevant matters presented, including the information and recommendation submitted by the USHBC and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and would effectuate the purposes of the 1996 Act.

**List of Subjects in 7 CFR Part 1218**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1218, Chapter XI of Title 7 is amended as follows:

## PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1218 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. In § 1218.52, paragraph (c) and the first sentence of paragraph (d)(2) are revised to read as follows:

**§ 1218.52 Assessments.**

* * * * *

(c) Such assessments shall be levied at a rate of $18 per ton (or $0.01984 per kg) on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary.

(d) * * *

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0029 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. * * *

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Dated: September 24, 2013.

**Rex A. Barnes,**

*Associate Administrator.*

[FR Doc. 2013–23695 Filed 9–27–13; 8:45 am]

**BILLING CODE 3410–02–P**

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## FEDERAL RESERVE SYSTEM

## 12 CFR Parts 225 and 252

**[Docket No. R–1463; RIN 7100 AE–01]**

## Regulations Y and YY: Application of the Revised Capital Framework to the Capital Plan and Stress Test Rules

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

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

**SUMMARY:** The Board invites comment on an interim final rule that amends the capital plan and stress test rules to require a bank holding company with total consolidated assets of $50 billion or more to estimate its tier 1 common ratio using the methodology currently in effect in 2013 under the existing capital guidelines (not the rules as revised on July 2, 2013). The interim final rule also clarifies when a banking organization would estimate its minimum regulatory capital ratios using the advanced approaches for a given capital plan and stress test cycle and makes minor, technical changes to the capital plan rule.

**DATES:** This rule is effective on September 30, 2013. Comments must be received on or before November 25, 2013.

**ADDRESSES:** You may submit comments, identified by Docket R–1463 and RIN No. 7100 AE 01, by any of the following methods:

*Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

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

*Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

*Facsimile:* (202) 452–3819 or (202) 452–3102.

*Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ryu, Deputy Associate Director, (202) 263–4833, Constance Horsley, Manager, (202) 452–5239, or Ann McKeehan, Senior Supervisory Financial Analyst, (202) 973–6903, Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272, Ben McDonough, Senior Counsel, (202) 452–2036, or Christine Graham, Senior Attorney, (202) 452–3005, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 2, 2013, the Board approved revised risk-based and leverage capital requirements for banking organizations that implement the Basel III regulatory capital reforms and certain changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (revised capital framework).[1] The revised capital framework introduces a new common equity tier 1 capital ratio and supplementary leverage ratio, raises the minimum tier 1 ratio and, for certain banking organizations, leverage ratio, implements strict eligibility criteria for regulatory capital instruments, and

[1] See, *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule* (July 2, 2013), available at: *http://www.federalreserve.gov/newsevents/press/bcreg/20130702a.htm* (revised capital framework).

introduces a standardized methodology for calculating risk-weighted assets. The new minimum regulatory capital ratios and the eligibility criteria for regulatory capital instruments will begin to take effect as of January 1, 2014, subject to transition provisions, for banking organizations that meet the criteria for the advanced approaches rule (advanced approaches banking organizations).[2] All other banking organizations must begin to comply with the revised capital framework beginning on January 1, 2015.

As the revised regulatory capital framework comes into effect, banking organizations will be required to reflect the new capital rules in their capital plans submitted under the Board's capital plan rule and in their stress tests conducted under the Board's rules implementing the stress test requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

## II. Capital Plan Rule

Pursuant to the Board's capital plan rule and Board's related supervisory process, the Comprehensive Capital Analysis and Review (CCAR), the Board assesses the internal capital planning process of a bank holding company with total consolidated assets of $50 billion or more (large bank holding company) and its ability to maintain sufficient capital to continue its operations under expected and stressful conditions.[3] Under the capital plan rule, a large bank holding company is required to submit an annual capital plan to the Board that contains estimates of its minimum regulatory capital ratios and its *tier 1 common ratio* under expected conditions and under a range of stressed scenarios over a nine-quarter planning horizon (planning horizon).[4] A capital plan also must include a discussion of how the large bank holding company will maintain a pro forma tier 1 common ratio above 5 percent under expected conditions and stressed scenarios.[5]

The tier 1 common ratio is a measure that the Federal Reserve has used for supervisory purposes during and after the financial crisis, including CCAR—it is not a minimum capital requirement.[6] The capital plan rule defines the tier 1 common ratio as the ratio of a bank holding company's tier 1 common capital to its total risk-weighted assets. Tier 1 common capital is defined as tier 1 capital less non-common elements in tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities.[7] The 5 percent threshold reflected a supervisory assessment of the minimum capital needed to provide a high level of confidence that a BHC can continue to be a going concern throughout stressful conditions and on a post-stress basis, based on an analysis of the historical distribution of earnings by large banking organizations.[8]

The preamble to the capital plan rule noted that the Basel III framework proposed by the Basel Committee on Bank Supervision includes a different definition of tier 1 common capital and that the Board and the other federal banking agencies continued to work on implementing Basel III in the United States.[9] The capital plan rule's definition of ''tier 1 common ratio'' states that the definition will remain in effect until the Board adopts an alternative tier 1 common ratio definition as a minimum regulatory capital ratio.[10]

## III. Stress Test Rules

The Board's stress test rules for large bank holding companies and nonbank financial companies supervised by the Board establish a framework for the Board to conduct annual supervisory stress tests to evaluate whether these companies have the capital necessary to absorb losses as a result of adverse economic conditions and require these companies to conduct semi-annual company-run stress tests.[11] Under the supervisory stress tests, the Board uses data as of September 30 of each year to assess a covered company's capital levels and regulatory capital ratios and its tier 1 common ratio, over the nine-quarter planning horizon of a given stress test cycle.[12] Similarly, the annual and semi-annual stress tests conducted by a covered company require it to report, among other elements, its regulatory capital ratios, including its tier 1 common ratio, for each quarter of a nine-quarter planning horizon.[13] The stress test rule defines the tier 1 common ratio by cross-reference to the capital plan rule, which, as previously described, provides that the tier 1 common ratio is to remain in effect until the Board adopts an alternative tier 1 common ratio definition.[14]

## IV. Incorporating the Revised Capital Framework Into Capital Plan and Stress Tests

Because the revised capital framework introduces a methodology for computing a common equity tier 1 capital ratio and a new minimum common equity tier 1 capital ratio, it is necessary to clarify how bank holding companies should calculate their tier 1 common ratio for the upcoming capital plan and stress test cycle.

With respect to a bank holding company's estimates of its regulatory capital ratios and the applicable minimum capital requirements, the bank holding company must project its regulatory capital ratios and meet the minimum capital requirements for each quarter of the planning horizon in accordance with the minimum capital requirements that are in effect during that quarter. Accordingly, under the revised capital framework, a bank holding company that is an advanced approaches banking organization would be required to calculate its common equity tier 1 capital ratio beginning in 2014, in accordance with the transition period arrangements, and meet a 4.0 percent minimum in 2014 and a 4.5 percent minimum in 2015. A bank holding company that is not advanced approaches banking organizations would be required to calculate its common equity tier 1 capital ratio beginning in 2015, in accordance with the transition period arrangements, and meet a 4.5 percent minimum in 2015. A state member bank that is a subsidiary of a bank holding company with total consolidated assets of $50 billion or more will reflect the new capital rules in the same manner as its bank holding company parent in projecting its capital for the upcoming stress test cycle.

With respect to a bank holding company's estimates of the tier 1 common ratio, the bank holding company must use the definitions of tier 1 capital and total risk-weighted assets currently in effect in 2013 under the existing capital guidelines for each quarter of the planning horizon, and not incorporate the new definition of

[2] A banking organization is subject to the advanced approaches rule if it has consolidated assets greater than or equal to $250 billion, if it has total consolidated on-balance sheet foreign exposures of at least $10 billion, or if it elects to apply the advanced approaches rule.

[3] 76 FR 74631 (Dec. 1, 2011) (codified at 12 CFR 225.8) (capital plan rule).

[4] *See generally* 12 CFR 225.8.

[5] *Id.* at § 225.8(d)(2)(i)(B).

[6] 76 FR 74631, 74636 (December 1, 2011).

[7] Basel Committee on Banking Supervision, *Calibrating regulatory minimum capital requirements and capital buffers: A top-down approach* (October 2010), available at *http://www.bis.org/publ/bcbs180.htm.*

[8] 76 FR 74631, 74637 (December 1, 2011).

[9] *Id.*at § 225.8(c)(9).

[10] 77 FR 62378 (Oct. 12, 2012) (codified at 12 CFR part 252, subparts F and G). The changes in this interim final rule will apply to nonbank financial companies supervised by the Board after they become subject to stress test requirements.

[11] 12 CFR 252.134(a).

[12] *Id.* at 252.146(a).

[13] *Id.* at 252.132(q), 252.142(t).

common equity tier 1 that is part of the revised capital framework that will become effective in 2014 and 2015. Preserving the tier 1 common ratio methodology maintains consistency with previous capital plan cycles during the phase-in of the new common equity tier 1 capital minimum requirement. Moreover, the new minimum common equity tier 1 capital ratio will be phased in over several years. Using the new methodology with the lower first year phase-in minimum ratio for the capital plan and stress test cycle that begins October 1, 2013, would likely result in large bank holding companies being subject to a common equity capital standard in the first quarters of the planning horizon that is less stringent than the standard used in previous capital plan and stress test cycles. Once the new minimum common equity tier 1 capital ratio reaches its permanent level of 4.5 percent in 2015, the Board expects that the combination of changes in the methodology for computing the common equity tier 1 ratio and the minimum level of 4.5 percent will be more stringent than the current capital plan tier 1 common ratio of 5.0 percent. Under the new common equity tier 1 capital definition, most elements of accumulated other comprehensive income (AOCI), such as gains and losses on available-for-sale debt securities, will flow through to common equity, except in the case of non-advanced approaches banking organizations that make an AOCI opt-out election.[15] In addition, more assets will be subject to deduction, including investments in unconsolidated financial institutions and all deferred tax assets that arise from operating losses and tax credit carry forwards.

Table 1 illustrates the minimum common equity capital ratios to which large bank holding companies will be subject in the capital plan and stress test cycles that begin October 1, 2013.

TABLE 1—COMMON EQUITY RATIOS APPLICABLE TO LARGE BANK HOLDING COMPANIES IN THE CAPITAL PLAN AND STRESS TEST CYCLES THAT BEGIN OCTOBER 1, 2013

| | Q4 2013 | Q1 2014 | Q2 2014 | Q3 2014 | Q4 2014 | Q1 2015 | Q2 2015 | Q3 2015 | Q4 2015 |
|---|---|---|---|---|---|---|---|---|---|
| Advanced approaches bank holding companies. | Current T1C ratio of 5.0%. | Current T1C ratio of 5.0%. CET1 ratio of 4.0%. | Current T1C ratio of 5.0%. CET1 ratio of 4.0%. | Current T1C ratio of 5.0%. CET1 ratio of 4.0%. | Current T1C ratio of 5.0%. CET1 ratio of 4.0%. | Current T1C ratio of 5.0%. CET1 ratio of 4.5%. | Current T1C ratio of 5.0%. CET1 ratio of 4.5%. | Current T1C ratio of 5.0%. CET1 ratio of 4.5%. | Current T1C ratio of 5.0% CET1 ratio of 4.5%. |
| Non-advanced approaches bank holding companies. | Current T1C ratio of 5.0%. | Current T1C ratio of 5.0%. | Current T1C ratio of 5.0%. | Current T1C ratio of 5.0%. | Current T1C ratio of 5.0%. | Current T1C ratio of 5.0%. CET1 ratio of 4.5%. | Current T1C ratio of 5.0%. CET1 ratio of 4.5%. | Current T1C ratio of 5.0%. CET1 ratio of 4.5%. | Current T1C ratio of 5.0% CET1 ratio of 4.5%. |

*Current T1C ratio:* the ratio of a bank holding company's tier 1 common capital calculated using the definitions in place as of the effective date of the interim final rule (*i.e.,* tier 1 capital as defined under Appendix A of 12 CFR part 225, less the non-common elements of tier 1 capital, over total risk-weighted assets as defined under Appendices A, E, and G of 12 CFR part 225).

*CET1 ratio:* a bank holding company's common equity tier 1 capital ratio as calculated under 12 CFR part 217, including the transition provisions of 12 CFR part § 217.300, as applicable within each quarter of the capital plan and stress test cycles that begin October 1, 2013.

## V. Parallel Run Notification Date

In light of the issuance of the revised capital framework, the Board is also providing clarity on when a banking organization would be required to estimate its minimum regulatory capital ratios over the planning horizon using the advanced approaches for a given capital planning and stress testing cycle.

A bank holding company that is an advanced approaches banking organization is required to use the advanced approaches to calculate its minimum regulatory capital ratios if it has conducted a satisfactory parallel run, which is defined as a period of no less than four consecutive calendar quarters during which a banking organization complies with certain qualification requirements of the advanced approaches.[16] Currently, all advanced approaches banking organizations are in parallel run, but it is possible that firms could complete a satisfactory parallel run in the near term and, as a result, be required to calculate their regulatory capital ratios using the advanced approaches Under the current capital plan rule and stress test rule, an advanced approaches banking organization would be required to estimate its capital ratios over the planning horizon using the advanced approaches if the firm is notified any time before January 5, which is the date on which a banking organization must submit its capital plan and its stress test results to the Board.

In order to provide additional notice to an advanced approaches banking organization regarding when it must begin to estimate its advanced approaches regulatory capital ratios under stressed conditions in a given capital plan or stress test cycle, the interim final rule provides that a bank holding company must be notified that it has completed its parallel run by September 30 of a given year in order to be required to estimate its capital ratios using the advanced approaches for the capital plan or stress test cycle that begins on October 1 of that year.

## VI. Technical Changes

The interim final rule makes minor technical changes to the capital plan rule. It clarifies that a covered company that has not filed the FR Y–9C report for the four most recent consecutive quarters will calculate its total consolidated assets as reported on the company's available FR Y–9C reports for the most recent quarter or consecutive quarters. It clarifies that the Board (or the Reserve Bank, with concurrence of the Board) may extend the resubmission period for a capital plan beyond an initial 60 day extension if the Board or Reserve Bank determines that such longer period is appropriate.

The interim final rule modifies the capital plan rule to reflect the Board's current practice of publicly disclosing its decision to object or not object to a bank holding company's capital plan along with a summary of the Board's analyses of that company. The rule provides that any disclosure will occur by March 31 of each calendar year, unless the Board determines that another date is appropriate. With regard to the Board's review of bank holding companies' capital plans, the Board expects the summary results largely will be similar to the results disclosed in previous CCAR exercises, unless the Board determines that different or

[15] *See* Revised capital framework, § ___.22(b)(2).

[16] 12 CFR part 225, Appendix G, section 21(c).

additional disclosures would be appropriate.

The interim final rule also corrects a typographical numbering error and removes the clarification of the start of the stress test cycle for the stress test cycle that began in 2012.

## VII. Effective Date; Solicitation of Comments

This interim final rule is effective September 30, 2013. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [17] Similarly, a final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the final rule.[18]

Consistent with section 553(b)(B) of the APA, the Board finds that issuing this rule as an interim final rule is necessary to clarify how a large bank holding company must incorporate the revised capital framework adopted July 2, 2013, into its capital plan and stress tests for purposes of the capital plan and stress test cycles that begin October 1, 2013. This interim final rule also clarifies when a bank holding company would be required to calculate its minimum regulatory capital ratios using the advanced approaches for a given capital plan and stress testing cycle. Obtaining notice and comment prior to issuing the interim final rule would be impracticable and contrary to the public interest. The capital rules were only recently revised and the short effective date of those revisions provide good cause to publish the interim final rule with an immediate effective date in order to remove uncertainty about the standards in the capital plan rule and reduce the burden of requiring firms to change their capital calculations in advance of the effective date.

The approval by the Board of the revised capital framework in July, 2013, prompted a need to clarify how a large bank holding company would incorporate these rules into its capital plan and stress tests for the capital plan and stress test cycles that begin October 1, 2013. In addition, the definition of ''tier 1 common ratio'' used in the capital plan rule, and incorporated by cross reference in the stress test rules, stated that the definition would remain in effect until the Board had adopted an alternative tier 1 common ratio definition as a minimum regulatory capital ratio.[19] The approach taken in the interim final rule is consistent with the Board's previous interpretations of the capital plan and stress test rules.[20] It also ensures that the tier 1 common ratio is no less stringent than the ratio used in previous cycles.

In addition, the interim final rule provides that a bank holding company must be notified that it has completed its parallel run by September 30 of a given year in order to be required to estimate its capital ratios using the advanced approaches for that year's capital plan or stress test cycle. This change provides clearer notice to an advanced approaches banking organization so that it could anticipate when it will be required to calculate its regulatory capital ratios using the advanced approaches in a given capital plan or stress test cycle.

Moreover, the interim final rule should not impose any incremental burden on these firms. The interim final rule relieves burden on them by clarifying the process for their upcoming capital plan submissions and company-run stress tests and providing additional time to build systems and processes necessary to effectively implement in a stress test the regulatory capital requirements of the advanced approaches rules.

Although notice and comment are not required prior to the effective date of this interim final rule, the Board invites comment on all aspects of this rulemaking and will revise this interim final rule if necessary or appropriate in light of the comments received. The Board is seeking comments on all aspects of the interim final rule. In particular:

*Question 1.* What, if any, additional transitional arrangements should the Board consider for future capital plan and stress test cycles? Should the Board remove the capital plan's tier 1 common ratio of 5.0 percent, or conversely, maintain the tier 1 common ratio of 5.0 percent, but require bank holding companies to calculate the ratio using the more stringent definition of capital?

*Question 2.* What, if any, modifications should be made to the advanced approaches notification date to better facilitate the timely notification of advanced approaches banking organizations of their need to use the advanced approaches in estimating their regulatory capital ratios for the capital plan and stress test purposes?

[17] 5 U.S.C. 553(b)(B).

[18]

[19] *Id.*at § 225.8(c)(9).

[20] *See* Federal Reserve System Comprehensive Capital Analysis and Review: Summary Instructions and Guidance (November 22, 2011), *available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20111122d1.pdf.*

## VIII. Regulatory Analysis

### *A. Regulatory Flexibility Act Analysis*

The Board has considered the potential impact of the interim final rule on small companies in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the interim final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a regulatory flexibility analysis.

For the reason discussed in the Supplementary Information above, the agencies are issuing this interim final rule to clarify the requirements for certain companies required to submit capital plans to the Board on January 5, 2014, and conduct Dodd-Frank Act company run stress tests in the stress test cycle that commences on October 1, 2013. Under regulations issued by the Small Business Administration (''SBA''), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization). The interim final rule would apply to bank holding companies with total consolidated asset of $50 billion or more and nonbank financial companies supervised by the Board. Companies that would be subject to the interim finale rule therefore substantially exceed the $500 million total asset threshold at which a company is considered a small company under SBA regulations. In light of the foregoing, the Board does not believe that the interim final rule would have a significant economic impact on a substantial number of small entities.

### *B. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make this interim final rule easier to understand. For example:

- Has the Board organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation

easier to understand? If so, what changes would make the regulation easier to understand?

- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could the Board do to make the regulation easier to understand?

*C. Paperwork Reduction Act*

This interim final rule references currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) provided for in the capital plan rules. This interim final rule does not introduce any new collections of information nor does it substantively modify the collections of information that Office of Management and Budget (OMB) has approved. Therefore, no Paperwork Reduction Act submissions to OMB are required.

**List of Subjects**

*12 CFR Part 225*

Administrative practice and procedure; Banks, banking; Capital Planning; Holding companies; Reporting and recordkeeping requirements; Securities, Stress Testing.

*12 CFR Part 252*

Administrative practice and procedure, Banks, Banking, Capital Planning; Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress Testing.

**Authority and Issuance**

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

## Subpart A—General Provisions

■ 2. Revise § 225.8 to read as follows:

### § 225.8 Capital planning.

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain bank holding companies.

(b) *Scope and effective date.* (1) This section applies to every top-tier bank holding company domiciled in the United States:

(i) With average total consolidated assets of $50 billion or more. Average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average; or

(ii) That is subject to this section, in whole or in part, by order of the Board based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(2) Beginning on December 23, 2011, the provisions of this section shall apply to any bank holding company that is subject to this section pursuant to paragraph (b)(1), provided that:

(i) Until July 21, 2015, this section will not apply to any bank holding company subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010, available at *http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm*); and

(ii) A bank holding company that becomes subject to this section pursuant to paragraph (b)(1)(i) after the 5th of January of a calendar year shall not be subject to the requirements of paragraphs (d)(1)(ii), (d)(4), and (f)(1)(iii) of this section until January 1 of the next calendar year.

(3) Notwithstanding any other requirement in this section, for a given capital plan cycle (including the January 5 submission of a capital plan under paragraph (d)(1) of this section and any resubmission of the capital plan under paragraph (d)(4) of this section during the capital plan cycle), a bank holding company's estimates of its pro forma regulatory capital ratios and its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches if the bank holding company is notified on or after the first day of that capital plan cycle (October 1) that the bank holding company is required to calculate its risk-based capital requirements using the advanced approaches.

(4) Nothing in this section shall limit the authority of the Federal Reserve to issue a capital directive or take any other supervisory or enforcement action, including action to address unsafe or unsound practices or conditions or violations of law.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(2) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

(3) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(4) *Capital plan* means a written presentation of a bank holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (d)(2) of this section.

(5) *Capital plan cycle* means the period beginning on October 1 of a calendar year and ending on September 30 of the following calendar year.

(6) *Capital policy* means a bank holding company's written assessment of the principles and guidelines used for capital planning, capital issuance, usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for dividend and stock repurchases; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(7) *Minimum regulatory capital ratio* means any minimum regulatory capital ratio that the Federal Reserve may require of a bank holding company, by regulation or order, including, as applicable, the bank holding company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, E, and G to this part (12 CFR part 225) and

12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation.

(8) *Planning horizon* means the period of at least nine quarters, beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan, over which the relevant projections extend.

(9) *Tier 1 capital* has the same meaning as under appendix A to this part or under 12 CFR part 217, as applicable, or any successor regulation.

(10) *Tier 1 common capital* means tier 1 capital as defined under appendix A to this part less the non-common elements of tier 1 capital, including perpetual preferred stock and related surplus, minority interest in subsidiaries, trust preferred securities and mandatory convertible preferred securities.

(11) *Tier 1 common ratio* means the ratio of a bank holding company's tier 1 common capital to total risk-weighted assets as defined under appendices A and E to this part.

(d) *General requirements*—(1) *Annual capital planning.* (i) A bank holding company must develop and maintain a capital plan.

(ii) A bank holding company must submit its complete capital plan to the appropriate Reserve Bank and the Board each year by the 5th of January, or such later date as directed by the Board or the appropriate Reserve Bank, with concurrence of the Board.

(iii) The bank holding company's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (d)(1)(ii) of this section:

(A) Review the robustness of the bank holding company's process for assessing capital adequacy,

(B) Ensure that any deficiencies in the bank holding company's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the bank holding company's capital plan.

(2) *Mandatory elements of capital plan.* A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including any minimum regulatory capital ratios (for example, leverage, tier 1 risk-based, and total risk-based capital ratios) and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under expected conditions and under a range of stressed scenarios, including any scenarios provided by the Federal Reserve and at least one stressed scenario developed by the bank holding company appropriate to its business model and portfolios;

(B) A calculation of the pro forma tier 1 common ratio over the planning horizon under expected conditions and under a range of stressed scenarios and discussion of how the company will maintain a pro forma tier 1 common ratio above 5 percent under expected conditions and the stressed scenarios required under paragraphs (d)(2)(i)(A) and (ii) of this section;

(C) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(D) A description of all planned capital actions over the planning horizon.

(ii) A detailed description of the bank holding company's process for assessing capital adequacy, including:

(A) A discussion of how the bank holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the minimum regulatory capital ratios and above a tier 1 common ratio of 5 percent, and serve as a source of strength to its subsidiary depository institutions;

(B) A discussion of how the bank holding company will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The bank holding company's capital policy; and

(iv) A discussion of any expected changes to the bank holding company's business plan that are likely to have a material impact on the firm's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of the Board or appropriate Reserve Bank, the bank holding company shall provide the Federal Reserve with information regarding—

(i) The bank holding company's financial condition, including its capital;

(ii) The bank holding company's structure;

(iii) Amount and risk characteristics of the bank holding company's on- and off-balance sheet exposures, including exposures within the bank holding company's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The bank holding company's relevant policies and procedures, including risk management policies and procedures;

(v) The bank holding company's liquidity profile and management; and

(vi) Any other relevant qualitative or quantitative information requested by the Board or the appropriate Reserve Bank to facilitate review of the bank holding company's capital plan under this section.

(4) *Re-submission of a capital plan.* (i) A bank holding company must update and re-submit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The bank holding company determines there has been or will be a material change in the bank holding company's risk profile, financial condition, or corporate structure since the bank holding company adopted the capital plan;

(B) The Board or the appropriate Reserve Bank objects to the capital plan; or

(C) The Board or the appropriate Reserve Bank, with concurrence of the Board, directs the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(*1*) The capital plan is incomplete or the capital plan, or the bank holding company's internal capital adequacy process, contains material weaknesses;

(*2*) There has been or will likely be a material change in the bank holding company's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(*3*) The stressed scenario(s) developed by the bank holding company is not appropriate to its business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on a bank holding company's risk profile and financial condition require the use of updated scenarios; or

(*4*) The capital plan or the condition of the bank holding company raise any of the issues described in paragraph (e)(2)(ii) of this section.

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, may, at its discretion, extend the

30-day period in paragraph (d)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a bank holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(e) *Review of capital plans by the Federal Reserve; publication of summary results*—(1) *Considerations and inputs.* (i) The Board or the appropriate Reserve Bank, with concurrence of the Board, will consider the following factors in reviewing a bank holding company's capital plan:

(A) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the firm and the company's capital policy;

(B) The reasonableness of the bank holding company's assumptions and analysis underlying the capital plan and its methodologies for reviewing the robustness of its capital adequacy process; and

(C) The bank holding company's ability to maintain capital above each minimum regulatory capital ratio and above a tier 1 common ratio of 5 percent on a pro forma basis under expected and stressful conditions throughout the planning horizon, including but not limited to any stressed scenarios required under paragraph (d)(2)(i)(A) and (ii) of this section.

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, will also consider the following information in reviewing a bank holding company's capital plan:

(A) Relevant supervisory information about the bank holding company and its subsidiaries;

(B) The bank holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of the bank holding company's loss, revenue, and reserve projections;

(C) As applicable, the Federal Reserve's own pro forma estimates of the firm's potential losses, revenues, reserves, and resulting capital adequacy under expected and stressful conditions, including but not limited to any stressed scenarios required under paragraph (d)(2)(i)(A) and (ii) of this section, as well as the results of any stress tests conducted by the bank holding company or the Federal Reserve; and

(D) Other information requested or required by the appropriate Reserve Bank or the Board, as well as any other information relevant, or related, to the bank holding company's capital adequacy.

(2) *Federal Reserve action on a capital plan.* (i) The Board or the appropriate Reserve Bank, with concurrence of the Board, will object, in whole or in part, to the capital plan or provide the bank holding company with a notice of non-objection to the capital plan:

(A) By March 31 of the calendar year in which a capital plan was submitted pursuant to paragraph (d)(1)(ii) of this section, and

(B) By the date that is 75 calendar days after the date on which a capital plan was resubmitted pursuant to paragraph (d)(4) of this section.

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, may object to a capital plan if it determines that:

(A) The bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process;

(B) The assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies for reviewing the robustness of its capital adequacy process, are not reasonable or appropriate;

(C) The bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio and above a tier 1 common ratio of 5 percent, on a pro forma basis under expected and stressful conditions throughout the planning horizon; or

(D) The bank holding company's capital planning process or proposed capital distributions otherwise constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or any condition imposed by, or written agreement with, the Board. In determining whether a capital plan or any proposed capital distribution would constitute an unsafe or unsound practice, the appropriate Reserve Bank would consider whether the bank holding company is and would remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

(iii) The Board or the appropriate Reserve Bank, with concurrence of the Board, will notify the bank holding company in writing of the reasons for a decision to object to a capital plan.

(iv) If the Board or the appropriate Reserve Bank, with concurrence of the Board, objects to a capital plan and until such time as the Board or the appropriate Reserve Bank, with concurrence of the Board, issues a non-objection to the bank holding company's capital plan, the bank holding company may not make any capital distribution, other than those capital distributions with respect to which the Board or the appropriate Reserve Bank has indicated in writing its non-objection.

(v) The Board may disclose publicly its decision to object or not object to a bank holding company's capital plan under this section, along with a summary of the Board's analyses of that company. Any disclosure under this paragraph (e)(2)(v) will occur by March 31, unless the Board determines that a later disclosure date is appropriate.

(3) *Request for reconsideration or hearing.* Within 10 calendar days of receipt of a notice of objection to a capital plan by the Board or the appropriate Reserve Bank:

(i) A bank holding company may submit a written request to the Board requesting reconsideration of the objection, including an explanation of why reconsideration should be granted. Within 10 calendar days of receipt of the bank holding company's request, the Board will notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan or a specific capital distribution; or

(ii) As an alternative to paragraph (e)(3)(i) of this section, a bank holding company may submit a written request to the Board for a hearing. Any hearing shall follow the procedures described in paragraph (f)(5)(ii) through (iii) of this section.

(f) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval.* Notwithstanding a notice of non-objection under paragraph (e)(2)(i) of this section a bank holding company may not make a capital distribution under the following circumstances, unless it receives approval from the Board or appropriate Reserve Bank pursuant to paragraph (f)(4) of this section:

(i) After giving effect to the capital distribution, the bank holding company would not meet a minimum regulatory capital ratio or a tier 1 common ratio of at least 5 percent;

(ii) The Board or the appropriate Reserve Bank, with concurrence of the Board, notifies the company in writing that the Federal Reserve has determined that the capital distribution would result in a material adverse change to the organization's capital or liquidity

structure or that the company's earnings were materially underperforming projections;

(iii) Except as provided in paragraph (f)(2) of this section, the dollar amount of the capital distribution will exceed the amount described in the capital plan for which a non-objection was issued under this section; or

(iv) The capital distribution would occur after the occurrence of an event requiring resubmission under paragraphs (d)(4)(i)(A) and (C) of this section and before the Federal Reserve acted on the resubmitted capital plan.

(2) *Exception for well capitalized bank holding companies.* (i) A bank holding company may make a capital distribution for which the dollar amount exceeds the amount described in the capital plan for which a non-objection was issued under this section if the following conditions are satisfied:

(A) The bank holding company is, and after the capital distribution would remain, well capitalized as defined in § 225.2(r) of Regulation Y (12 CFR 225.2(r));

(B) The bank holding company's performance and capital levels are, and after the capital distribution would remain, consistent with its projections under expected conditions as set forth in its capital plan under this paragraph (d)(2)(i);

(C) The annual aggregate dollar amount of all capital distributions (beginning on April 1 of a calendar year and ending on March 31 of the following calendar year) would not exceed the total amounts described in the company's capital plan for which the bank holding company received a notice of non-objection by more than 1.00 percent multiplied by the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's first quarter FR Y–9C;

(D) The bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to a capital distribution that includes the elements described in paragraph (f)(3) of this section; and

(E) The Board or the appropriate Reserve Bank, with concurrence of the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank, with concurrence of the Board, shall apply the criteria described in paragraph (f)(4)(iv) of this section.

(ii) The exception in this paragraph (f)(2) shall not apply if the Board or the appropriate Reserve Bank notifies the bank holding company in writing that it may not take advantage of this exception.

(3) *Contents of request.* (i) A request for a capital distribution under this section shall be filed with the appropriate Reserve Bank and the Board and shall contain the following information:

(A) The bank holding company's current capital plan or an attestation that there have been no changes to the capital plan since it was last submitted to the Federal Reserve;

(B) The purpose of the transaction;

(C) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(D) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data).

(ii) Any request submitted with respect to a capital distribution described in paragraph (f)(1)(i) of this section shall also include a plan for restoring the bank holding company's capital to an amount above a minimum level within 30 days and a rationale for why the capital distribution would be appropriate.

(4) *Approval of certain capital distributions.* (i) A bank holding company must obtain approval from the Board or the appropriate Reserve Bank, with concurrence of the Board, before making a capital distribution described in paragraph (f)(1) of this section.

(ii) A request for a capital distribution under this section must be filed with the appropriate Reserve Bank and contain all the information set forth in paragraph (f)(3) of this section.

(iii) The Board or the appropriate Reserve Bank, with concurrence of the Board, will act on a request under this paragraph (f)(4) within 30 calendar days after the receipt of a complete request under paragraph (f)(4)(ii) of this section. The Board or the appropriate Reserve Bank may, at any time, request additional information that it believes is necessary for its decision.

(iv) In acting on a request under this paragraph, the Board or appropriate Reserve Bank will apply the considerations and principles in paragraph (e) of this section. In addition, the Board or the appropriate Reserve Bank may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraphs (f)(3) and (f)(5)(iii) of this section.

(5) *Disapproval and hearing.* (i) The Board or the appropriate Reserve Bank will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 10 calendar days after receipt of a disapproval by the Board, the bank holding company may submit a written request for a hearing.

(ii) The Board will order a hearing within 10 calendar days of receipt of the request if it finds that material facts are in dispute, or if it otherwise appears appropriate. Any hearing conducted under this paragraph shall be held in accordance with the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(iii) At the conclusion of the hearing, the Board will by order approve or disapprove the proposed capital distribution on the basis of the record of the hearing.

## PART 252—ENHANCED PRUDENTIAL STANDARDS (Regulation YY).

■ 3. The authority citation for part 252 continues to read as follows:

**Authority:** 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p-1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 4. Subpart F to part 252 is revised to read as follows:

## Subpart F—Supervisory Stress Test Requirements for Covered Companies

Sec.

252.131 Authority and purpose.
252.132 Definitions.
252.133 Applicability
252.134 Annual analysis conducted by the Board.
252.135 Data and information required to be submitted in support of the Board's analyses.
252.136 Review of the Board's analysis; publication of summary results.
252.137 Use requirement.

### § 252.131 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p-1, 1844(b), 1844(c), 5361, 5365, 5366.

(b) *Purpose.* This subpart implements section 165(i)(1) of the Dodd-Frank Act (12 U.S.C. 5365(i)(1)), which requires the Board to conduct annual analyses of nonbank financial companies supervised by the Board and bank holding companies with $50 billion or more in total consolidated assets to evaluate whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

**§ 252.132 Definitions.**

For purposes of this subpart F, the following definitions apply:

(a) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) *Average total consolidated assets* means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(d) *Bank holding company* has the same meaning as in § 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(e) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

(f) *Covered company* means:

(1) A bank holding company (other than a foreign banking organization) with average total consolidated assets of $50 billion or more; and

(2) A nonbank financial company supervised by the Board.

(g) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(h) *Foreign banking organization* has the same meaning as in § 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(i) *Nonbank financial company supervised by the Board* means a nonbank financial company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(j) *Planning horizon* means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1) over which the relevant projections extend.

(k) *Pre-provision net revenue* means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(l) *Provision for loan and lease losses* means the provision for loan and lease losses as reported by the covered company on the FR Y–9C.

(m) *Regulatory capital ratio* means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, the company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, E, and G to this part (12 CFR part 225) and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation.

(n) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board annually determines are appropriate for use in the supervisory stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(o) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(p) *Stress test cycle* means the period between October 1 of a calendar year and September 30 of the following calendar year.

(q) *Subsidiary* has the same meaning as in § 225.2(o) the Board's Regulation Y (12 CFR 225.2).

(r) *Tier 1 common ratio* has the same meaning as in the Board's Regulation Y (12 CFR 225.8).

**§ 252.133 Applicability.**

(a) *Compliance date for bank holding companies that are covered companies as of November 15, 2012*—(1) *In general.* Except as provided in paragraph (a)(2) or (3) of this section, a bank holding company that is a covered company as of November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.

(2) *2009 Supervisory Capital Assessment Program.* A bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such a bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle that commences on November 15, 2012, unless that time is extended by the Board in writing.

(3) *SR Letter 01–01.* A U.S.-domiciled bank holding company that is a covered company as of November 15, 2012, and is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing.

(b) *Compliance date for institutions that become covered companies after November 15, 2012*—(1) *Bank holding companies.* A bank holding company that becomes a covered company after November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) *Nonbank financial companies supervised by the Board.* A company that becomes a nonbank financial company supervised by the Board must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company first becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(c) *Ongoing application.* A bank holding company that is a covered company will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y–9C. The calculation will be effective on the as-of date of the fourth consecutive FR Y–9C.

(d) *Advanced approaches.* Notwithstanding any other requirement in this section, the Board's analysis of a covered company's capital in a given stress test cycle will not include estimates using the advanced approaches if the covered company is notified on or after the first day of that stress test cycle (October 1) that the covered company is required to calculate its risk-based capital

requirements using the advanced approaches.

**§ 252.134 Annual analysis conducted by the Board.**

(a) *In general.* (1) On an annual basis, the Board will conduct an analysis of each covered company's capital, on a total consolidated basis, taking into account all relevant exposures and activities of that covered company, to evaluate the ability of the covered company to absorb losses in specified economic and financial conditions.

(2) The analysis will include an assessment of the projected losses, net income, and pro forma capital levels and regulatory capital ratios, tier 1 common ratio, and other capital ratios for the covered company and use such analytical techniques that the Board determines are appropriate to identify, measure, and monitor risks of the covered company that may affect the financial stability of the United States.

(3) In conducting the analyses, the Board will coordinate with the appropriate primary financial regulatory agencies and the Federal Insurance Office, as appropriate.

(b) *Economic and financial scenarios related to the Board's analysis.* The Board will conduct its analysis under this section using a minimum of three different scenarios, including a baseline scenario, adverse scenario, and severely adverse scenario. The Board will notify covered companies of the scenarios that the Board will apply to conduct the analysis for each stress test cycle by no later than November 15 of each year, except with respect to trading or any other components of the scenarios and any additional scenarios that the Board will apply to conduct the analysis, which will be communicated by no later than December 1.

**§ 252.135 Data and information required to be submitted in support of the Board's analyses.**

(a) *Regular submissions.* Each covered company must submit to the Board such data, on a consolidated basis, that the Board determines is necessary in order for the Board to derive the relevant pro forma estimates of the covered company over the planning horizon under the scenarios described in section 252.134(b).

(b) *Additional submissions required by the Board.* The Board may require a covered company to submit any other information on a consolidated basis that the Board deems necessary in order to:

(1) Ensure that the Board has sufficient information to conduct its analysis under this subpart; and

(2) Project a company's pre-provision net revenue, losses, provision for loan and lease losses, and net income; and, pro forma capital levels, regulatory capital ratios, tier 1 common ratio, and any other capital ratio specified by the Board under the scenarios described in § 252.134(b).

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

**§ 252.136 Review of the Board's analysis; publication of summary results.**

(a) *Review of results.* Based on the results of the analysis conducted under this subpart, the Board will conduct an evaluation to determine whether the covered company has the capital, on a total consolidated basis, necessary to absorb losses and continue its operation by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary under baseline, adverse and severely adverse scenarios, and any additional scenarios.

(b) *Communication of results to covered companies.* The Board will convey to a covered company a summary of the results of the Board's analyses of such covered company within a reasonable period of time, but no later than March 31.

(c) *Publication of results by the Board.* By March 31 of each calendar year, the Board will disclose a summary of the results of the Board's analyses of a covered company.

**§ 252.137 Use requirement.**

(a) *In general.* The board of directors and senior management of each covered company must consider the results of the analysis conducted by the Board under this subpart, as appropriate:

(1) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital);

(2) When assessing the covered company's exposures, concentrations, and risk positions; and

(3) In the development or implementation of any plans of the covered company for recovery or resolution.

(b) *Resolution plan updates.* Each covered company must update its resolution plan as the Board determines appropriate, based on the results of the Board's analyses of the covered company under this subpart.

■ 3. Subpart G to part 252 is revised to read as follows:

## Subpart G—Company-Run Stress Test Requirements for Covered Companies

Sec.
252.141 Authority and purpose.
252.142 Definitions.
252.143 Applicability.
252.144 Annual stress test.
252.145 Mid-cycle stress test.
252.146 Methodologies and practices.
252.147 Reports of stress test results.
252.148 Disclosure of stress test results.

**§ 252.141 Authority and purpose.**

(a) *Authority.* 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p-1, 1844(b), 1844(c), 5361, 5365, 5366.

(b) *Purpose.* This subpart implements section 165(i)(2) of the Dodd-Frank Act (12 U.S.C. 5365(i)(2)), which requires a covered company to conduct annual and semi-annual stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

**§ 252.142 Definitions.**

For purposes of this subpart, the following definitions apply:

(a) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) *Average total consolidated assets* means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(d) *Bank holding company* has the same meaning as in section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(e) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

(f) *Capital action* has the same meaning as in section 225.8(c)(2) of the Board's Regulation Y (12 CFR 225.8(c)(2)).

(g) *Covered company* means:

(1) A bank holding company (other than a foreign banking organization) with average total consolidated assets of $50 billion or more; and

(2) A nonbank financial company supervised by the Board.

(h) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(i) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(j) *Nonbank financial company supervised by the Board* means a nonbank financial company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(k) *Planning horizon* means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1 or April 1, as appropriate) over which the relevant projections extend.

(l) *Pre-provision net revenue* means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(m) *Provision for loan and lease losses* means the provision for loan and lease losses as reported by the covered company on the FR Y–9C.

(n) *Regulatory capital ratio* means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, the company's tier 1 and supplementary leverage ratios and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under appendices A, D, E, and G to this part (12 CFR part 225) and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation.

(o) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board, or with respect to the mid-cycle stress test required under section 252.145 of this subpart, the covered company, annually determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(p) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(q) *Stress test* means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered company over the planning horizon, taking into account its current condition, risks, exposures, strategies, and activities.

(r) *Stress test cycle* means the period between October 1 of a calendar year and September 30 of the following calendar year.

(s) *Subsidiary* has the same meaning as in section 225.2(o) the Board's Regulation Y (12 CFR 225.2).

(t) *Tier 1 common ratio* has the same meaning as in section 225.8 of the Board's Regulation Y (12 CFR 225.8).

**§ 252.143 Applicability.**

(a) *Compliance date for bank holding companies that are covered companies as of November 15, 2012*—(1) *In general.* Except as provided in paragraph (a)(2) or (3) of this section, a bank holding company that is a covered company as of November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle commencing on October 1, 2013, unless that time is extended by the Board in writing.

(2) *2009 Supervisory Capital Assessment Program.* A bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such a bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle commencing on November 15, 2012, unless that time is extended by the Board in writing.

(3) *SR Letter 01–01.* A U.S.-domiciled bank holding company that is a covered company as of November 15, 2012, and is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle commencing on October 1, 2015, unless that time is extended by the Board in writing.

(b) *Compliance date for institutions that become covered companies after November 15, 2012*—(1) *Bank holding companies.* A bank holding company that becomes a covered company after November 15, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) *Nonbank financial companies supervised by the Board.* A company that becomes a nonbank financial company supervised by the Board must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which company first becomes subject to the Board's minimum regulatory capital requirements, unless the Board accelerates or extends the compliance date.

(c) *Ongoing application.* A bank holding company that is a covered company will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y–9C. The calculation will be effective on the as-of date of the fourth consecutive FR Y–9C.

(d) *Advanced approaches.* Notwithstanding any other requirement in this section, for a given stress test cycle, a covered company's estimates of its pro forma regulatory capital ratios and the estimate of its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches if the company is notified on or after the first day of that stress test cycle (October 1) that it is required to calculate its risk-based capital requirements using the advanced approaches.

**§ 252.144 Annual stress test.**

(a) *In general.* A covered company must conduct an annual stress test by January 5 during each stress test cycle based on data as of September 30 of the preceding calendar year, unless the time or the as of date is extended by the Board in writing.

(b) *Scenarios provided by the Board*—(1) *In general.* In conducting a stress test under this section, a covered company must use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios to each covered company no later than November 15 of that calendar year.

(2) *Additional components.* (i) The Board may require a covered company with significant trading activity, as determined by the Board and specified

in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section. The data used in this component will be as of a date between October 1 and December 1 of that calendar year selected by the Board, and the Board will communicate the as-of date and a description of the component to the company no later than December 1 of the calendar year.

(ii) The Board may require a covered company to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Additional scenarios.* The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) *Notice and response.* If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2)(ii) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than September 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the covered company may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request. The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by December 1.

**§ 252.145 Mid-cycle stress test.**

(a) *Mid-cycle stress test requirement.* In addition to the stress test required under section 252.144 of this subpart, a covered company must conduct a stress test by July 5 during each stress test cycle based on data as of March 31 of that calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) *Scenarios related to mid-cycle stress tests*—(1) *In general.* A covered company must develop and employ a minimum of three scenarios, including a baseline scenario, adverse scenario, and severely adverse scenario, that are appropriate for its own risk profile and operations, in conducting the stress test required by this section.

(2) *Additional components.* The Board may require a covered company to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Additional scenarios.* The Board may require a covered company to use one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) *Notice and response.* If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2) of this section or one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than March 31. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the covered company may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request. The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by June 1.

**§ 252.146 Methodologies and practices.**

(a) *Potential impact on capital.* In conducting a stress test under sections 252.144 and 252.145, for each quarter of the planning horizon, a covered company must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for loan and lease losses, and net income; and

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios, the tier 1 common ratio, and any other capital ratios specified by the Board), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) *Assumptions regarding capital actions.* In conducting a stress test under §§ 252.144 and 252.145, a covered company is required to make the following assumptions regarding its capital actions over the planning horizon—

(1) For the first quarter of the planning horizon, the covered company must take into account its actual capital actions as of the end of that quarter; and

(2) For each of the second through ninth quarters of the planning horizon, the covered company must include in the projections of capital:

(i) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);

(ii) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and

(iii) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio.

(c) *Controls and oversight of stress testing processes*—(1) *In general.* The senior management of a covered company must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the covered company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws, regulations, and supervisory guidance. Policies of covered companies must also describe processes for scenario development for the mid-cycle stress test required under § 252.145.

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a covered company must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered company may warrant, but no less than annually. The board of directors and senior management of the covered company must receive a summary of the results of any stress test conducted under this subpart.

(3) *Role of stress testing results.* The board of directors and senior management of each covered company must consider the results of the analysis it conducts under this subpart, as appropriate:

(i) As part of the covered company's capital plan and capital planning process, including when making changes to the covered company's capital structure (including the level and composition of capital);

(ii) When assessing the covered company's exposures, concentrations, and risk positions; and

(iii) In the development or implementation of any plans of the covered company for recovery or resolution.

**§ 252.147 Reports of stress test results.**

(a) *Reports to the Board of stress test results.* (1) A covered company must report the results of the stress test required under § 252.144 to the Board by January 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(2) A covered company must report the results of the stress test required under § 252.145 to the Board by July 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(b) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

**§ 252.148 Disclosure of stress test results.**

(a) *Public disclosure of results*—(1) *In general.* (i) A covered company must disclose a summary of the results of the stress test required under section 252.144 in the period beginning on March 15 and ending on March 31, unless that time is extended by the Board in writing.

(ii) A covered company must disclose a summary of the results of the stress test required under § 252.145 in the period beginning on September 15 and ending on September 30, unless that time is extended by the Board in writing.

(2) *Disclosure method.* The summary required under this section may be disclosed on the Web site of a covered company, or in any other forum that is reasonably accessible to the public.

(b) *Summary of results.* A covered company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(1) A description of the types of risks included in the stress test;

(2) A general description of the methodologies used in the stress test, including those employed to estimate losses, revenues, provision for loan and lease losses, and changes in capital positions over the planning horizon;

(3) Estimates of—

(i) Pre-provision net revenue and other revenue;

(ii) Provision for loan and lease losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes;

(iv) Loan losses (dollar amount and as a percentage of average portfolio balance) in the aggregate and by subportfolio, including: domestic closed-end first-lien mortgages; domestic junior lien mortgages and home equity lines of credit; commercial and industrial loans; commercial real estate loans; credit card exposures; other consumer loans; and all other loans; and

(v) Pro forma regulatory capital ratios and the tier 1 common ratio and any other capital ratios specified by the Board;

(4) An explanation of the most significant causes for the changes in regulatory capital ratios and the tier 1 common ratio; and

(5) With respect to a stress test conducted pursuant to section 165(i)(2) of the Dodd-Frank Act by an insured depository institution that is a subsidiary of the covered company and that is required to disclose a summary of its stress tests results under applicable regulations, changes in regulatory capital ratios and any other capital ratios specified by the Board of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Content of results.* (1) The following disclosures required under paragraph (b) of this section must be on a cumulative basis over the planning horizon:

(i) Pre-provision net revenue and other revenue;

(ii) Provision for loan and lease losses, realized losses/gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gains;

(iii) Net income before taxes; and

(iv) Loan losses in the aggregate and by subportfolio.

(2) The disclosure of pro forma regulatory capital ratios, the tier 1 common ratio, and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

By order of the Board of Governors of the Federal Reserve System, September 24, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2013–23618 Filed 9–27–13; 8:45 am]

BILLING CODE 6210–01–P

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 252

**[Docket No. R–1464; RIN 7100 AE 02]**

## Annual Company-Run Stress Tests at Banking Organizations With Total Consolidated Assets of More Than $10 Billion But Less Than $50 Billion; One-Year Transition Period to Revised Regulatory Capital Framework for 2013–2014 Stress Test Cycle

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

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

**SUMMARY:** The Board invites comment on an interim final rule that provides a one-year transition period during which bank holding companies and most state member banks with more than $10 billion but less than $50 billion in total consolidated assets would not be required to reflect the revised regulatory capital framework that the Board approved on July 2, 2013 (revised capital framework) in their stress tests for the stress test cycle that begins October 1, 2013. For this stress test cycle, these companies will be required to estimate their pro forma capital levels and ratios over the full nine-quarter planning horizon using the Board's current regulatory capital rules. The interim final rule also clarifies when a banking organization would estimate its minimum regulatory capital ratios using

the advanced approaches for a given stress test cycle.

**DATES:** This rule is effective on September 30, 2013. Comments must be received on or before November 25, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No.R–1464 and RIN No. 7100 AE–02, by any of the following methods:

*Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

*Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

*Facsimile:* (202) 452–3819 or (202) 452–3102.

*Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ryu, Deputy Associate Director, (202) 263–4833, Constance Horsley, Manager, (202) 452–5239, David Palmer, Senior Supervisory Financial Analyst, (202) 452–2904; Joseph Cox, Financial Analyst, (202) 452–3216; or Keith Coughlin, Manager, (202) 452–2056, Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin W. McDonough, Senior Counsel, (202) 452–2036, or Christine Graham, Senior Attorney, (202) 452–3005, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

**SUPPLEMENTARY INFORMATION:** On July 2, 2013, the Board approved revised risk-based and leverage capital requirements for banking organizations that implement the Basel III regulatory capital reforms and certain changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (revised capital framework).[1] The revised capital framework introduces a new common equity tier 1 capital ratio and supplementary leverage ratio, raises the minimum tier 1 ratio and, for certain banking organizations, leverage ratio, implements strict eligibility criteria for regulatory capital instruments, and introduces a standardized methodology for calculating risk-weighted assets. The new minimum regulatory capital ratios and the eligibility criteria for regulatory capital instruments will begin to take effect as of January 1, 2014, subject to transition provisions, for banking organizations that meet the criteria for the advanced approaches rule (advanced approaches banking organizations).[2] All other banking organizations must begin to comply with the revised capital framework beginning on January 1, 2015.

As the revised capital framework comes into effect, banking organizations will be required to reflect the new capital rules in their company-run stress tests conducted under the Board's rules implementing the stress tests established by the Dodd-Frank Wall Street Reform and Consumer Protection Act (stress tests rules).[3]

## I. Description of Interim Final Rule

### *A. Transition Period for Revised Capital Framework*

Under the Board's stress test rules, each bank holding company with more than $10 billion and less than $50 billion total consolidated assets and each state member bank with more than $10 billion in total consolidated assets must conduct a company-run stress test to estimate the potential impact of three scenarios provided by the Board on its regulatory capital ratios.[4] In addition, each of these companies is required to disclose a summary of the results of its company-run stress tests within 90 days of submitting the results to the Board.

In this interim final rule, the Board is providing bank holding companies and state member banks with total consolidated assets of more than $10 but less than $50 billion (other than state member banks that are subsidiaries of bank holding companies with total consolidated assets of $50 billion or more) with a one-year transition period to incorporate the revised capital framework into their company-run stress tests. In the stress test cycle that begins on October 1, 2013, these companies will estimate their pro forma capital levels and ratios over the planning horizon using the capital rules in effect as of the beginning of the stress test cycle beginning on October 1, 2013, and will not reflect the impact of the revised capital framework in their company-run stress tests. In particular, for this stress test cycle, such a company will not calculate common equity tier 1 capital as defined in the revised capital framework or incorporate the effects of any changes to the definition of capital, any new or additional deductions from capital, or any changes to the calculation of risk-weighted assets.

The interim final rule does not provide the one-year transition period for state member banks that are subsidiaries of bank holding companies with total consolidated assets of $50 billion or more. Consistent with the stress test rules applicable to their bank holding company parents, these state member banks must project their regulatory capital ratios for each quarter of the planning horizon in accordance with the minimum capital requirements that will be in effect during that quarter. The Board is concurrently issuing an interim final rule clarifying this treatment for bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board.

The Board is issuing this interim final rule to tailor the application of the stress test rules for bank holding companies and state member banks with total consolidated assets of more than $10 but less than $50 billion (other than state member banks that are subsidiaries of bank holding companies with total

[1] *See Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule* (July 2, 2013), *available at: http://www.federalreserve.gov/newsevents/press/bcreg/20130702a.htm* (Revised capital framework).

[2] A banking organization is subject to the advanced approaches rule if it has consolidated assets greater than or equal to $250 billion, if it has total consolidated on-balance sheet foreign exposures of at least $10 billion, or if it elects to apply the advanced approaches rule.

[3] *See* 77 FR 62378 (October 12, 2012) (codified at 12 CFR part, 252 subpart H) (stress test rule).

[4] Savings and loan holding companies with more than $10 billion in total consolidated assets are also subject to the stress test rules; however, savings and loan holding companies are not subject to stress tests in this coming stress test cycle and thus have been omitted from the discussion in this interim final rule. In addition to the rule described above requiring annual company-run stress tests, in October of 2012 the Board also issued stress testing rules that apply to bank holding companies with $50 billion or more in total consolidated assets and any non-bank financial companies designated for supervision by the Board. Those rules set out the process for an annual supervisory stress test by the Federal Reserve and the requirements for semi-annual company run stress tests. *See* 12 CFR part 225, subparts F and G.

consolidated assets of $50 billion or more). The Board believes that requiring these companies to reflect the impact of the revised capital framework during the planning horizon of the stress test cycle beginning October 1, 2013, and to model alternative capital calculations in the middle of planning horizon, would add operational complexity and increase the likelihood of erroneous calculations or assumptions without a sufficient corresponding benefit. The complexity and increased risk of error could interfere with the ability of a these company to conduct company-run stress tests that capture material risks to the company and provide a meaningful forward-looking assessment of its capital adequacy without providing a corresponding near-term benefit.

In its stress test rules, the Board tailored the application of the stress test rules for companies with total consolidated assets of more than $10 but less than $50 billion in recognition of the fact that those companies are generally less complex and pose more limited risk to U.S. financial stability than larger banking organizations. Specifically, the stress test rule provided virtually all companies with total consolidated assets of more than $10 but less than $50 billion in 2012 with an additional year to begin conducting stress tests, provided a longer period of time for these companies to conduct their stress test each year, and does not require these billion companies to publicly disclose the results of the stress test conducted in the stress test cycle beginning October 1, 2013. In the preamble of the stress test rule, the Board stated that it expected to further tailor its approach for companies with total consolidated assets of more than $10 but less than $50 billion during implementation of the stress test rules. For example, the Board's regulatory reports that these companies use in reporting the results of their company-run stress tests (FR Y–16),[5] which are being finalized at this time, are shorter and simpler than the corresponding regulatory report, the FR Y–14 report, that is applicable to bank holding companies with $50 billion or more in total consolidated assets.[6]

The OCC and FDIC both plan to implement the Dodd-Frank Act stress testing requirements for the stress test cycle beginning October 1, 2013, in a similar manner for banks and savings associations under their supervision with between $10 and $50 billion in total consolidated assets.

*B. Parallel Run Notification Date*

In light of the issuance of the revised capital framework, the Board is providing clarity on when a bank holding company, savings and loan holding company, or state member bank would be required to calculate its minimum regulatory capital ratios using the advanced approaches for a given stress testing cycle.

A bank holding company, savings and loan holding company, or state member bank that is an advanced approaches banking organization is required to use the advanced approaches to calculate its minimum regulatory capital ratios if it has conducted a satisfactory parallel run, which is defined as a period of no less than four consecutive calendar quarters during which a banking organization complies with certain qualification requirements of the advanced approaches.[7] Currently, all advanced approaches banking organizations are in parallel run, but it is possible that firms could complete a satisfactory parallel run in the near term and, as a result, be required to calculate their regulatory capital ratios using the advanced approaches. Under the current stress test rule, such a firm arguably would be required to estimate its capital ratios over the planning horizon using the advanced approaches if the firm is notified any time before January 5, which is the date on which a banking organization must submit its stress test results to the Board.

In order to provide sufficient notice to an advanced approaches banking organization so that it could calculate its regulatory capital ratios based on the advanced approaches in a given stress test cycle, the interim final rule provides that a bank holding company, savings and loan holding company, or state member bank must be notified that it has completed its parallel run by September 30 of a given year in order to be required to estimate its capital ratios using the advanced approaches for the stress test cycle that begins on October 1 of that year.

## II. Effective Date; Solicitation of Comments

This interim final rule is effective October 1, 2013. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[8] Similarly, a final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the final rule.[9]

Consistent with section 553(b)(B) of the APA, the Board finds that issuing this rule as an interim final rule is necessary to clarify the process for bank holding companies and state member banks with total consolidated assets of more than $10 but less than $50 billion conducting Dodd-Frank Act stress tests in the stress test cycle that begins on the effective date of the interim final rule. Obtaining notice and comment prior to issuing the interim final rule would be impracticable and contrary to the public interest. Furthermore, the Board finds that there is good cause to publish the interim final rule with an immediate effective date.

The approval by the Board of the revised capital framework in July prompted a need to clarify how companies should incorporate the revised capital framework into conducting their first Dodd-Frank Act company-run stress test. Requiring bank holding companies and state member banks with total consolidated assets of more than $10 but less than $50 billion (other than state member banks that are subsidiaries of bank holding companies with total consolidated assets of $50 billion or more) to reflect the impact of the revised capital framework during the planning horizon of the stress test cycle beginning October 1, 2013, and model alternative capital calculations in the middle of the planning horizon, would add operational complexity and increase the likelihood of erroneous calculations or assumptions without a sufficient corresponding benefit. This complexity and increased risk of error may interfere with the ability of a company to conduct company-run stress tests that capture salient material risks to the company and provide a meaningful forward-looking assessment of its capital adequacy.

Moreover, the interim final rule should not impose any incremental burden on these firms. The interim final rule relieves burden on these companies by clarifying the process for their upcoming company-run stress tests and allowing them additional time to build systems and processes necessary to effectively implement the requirements of the revised capital framework.

[5] *See* 78 FR 16502 (March 15, 2013).

[6] In addition, in July 2013, the Board, jointly with the OCC and the Federal Deposit Insurance Corporation (FDIC), issued proposed supervisory guidance for companies the agencies supervise with between $10 and $50 billion in assets that builds upon the tailoring in the stress testing rule by further clarifying minimum expectations for company-run stress test practices and providing examples of satisfactory practices. *See* 78 FR 18716 (August 5, 2013).

[7] 12 CFR Part 225, Appendix G, section 21(c).

[8] 5 U.S.C. 553(b)(B).

Although notice and comment are not required prior to the effective date of this interim final rule, the Board invites comment on all aspects of this rulemaking and will revise this interim final rule if necessary or appropriate in light of the comments received. The Board is interested in receiving comments on all aspects of the interim final rule. In particular, are there any areas where the Board should further clarify the process for incorporating accounting and regulatory changes into a company's Dodd-Frank Act stress tests?

### III. Regulatory Analysis

*A. Regulatory Flexibility Act Analysis*

The Board has considered the potential impact of the interim final rule on small companies in accordance with the Regulatory Flexibility Act (5 U.S.C. 603(b)). Based on its analysis and for the reasons stated below, the Board believes that the interim final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a regulatory flexibility analysis.

For the reason discussed in the Supplementary Information above, the Board is issuing this interim final rule to clarify the requirements for certain companies required to conduct Dodd-Frank Act company run stress tests in the stress test cycle commencing on October 1, 2013. Under regulations issued by the Small Business Administration (''SBA''), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization). The interim final rule would apply to state member banks, bank holding companies, and savings and loan holding companies with more than $10 billion but less than $50 billion in total consolidated assets. Companies that would be subject to the interim finale rule therefore substantially exceed the $500 million total asset threshold at which a company is considered a small company under SBA regulations. In light of the foregoing, the Board does not believe that the interim final rule would have a significant economic impact on a substantial number of small entities.

*B. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make this interim final rule easier to understand. For example:

- Has the Board organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could the Board do to make the regulation easier to understand?

*C. Paperwork Reduction Act*

Request for Comment on Proposed Information Collection

This interim final rule references currently approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) provided for in the DFA stress test rules. This interim final rule does not introduce any new collections of information nor does it substantively modify the collections of information that Office of Management and Budget (OMB) has approved. Therefore, no Paperwork Reduction Act submissions to OMB are required.

### List of Subjects in 12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress Testing.

### Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

## PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY).

■ 1. The authority citation for part 252 continues to read as follows:

**Authority:** 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 2. Subpart H to part 252 is revised to read as follows:

## Subpart H—Company-Run Stress Test Requirements for Banking Organizations With Total Consolidated Assets Over $10 Billion That Are Not Covered Companies

Sec.
252.151 Authority and purpose.
252.152 Definitions.
252.153 Applicability.
252.154 Annual stress test.
252.155 Methodologies and practices.
252.156 Reports of stress test results.
252.157 Disclosure of stress test results.

### § 252.151 Authority and purpose.

(a) *Authority.* 12 U.S.C. 321–338a, 1467a(g), 1818, 1831o, 1831p–1, 1844(b), 1844(c), 3906–3909, 5365.

(b) *Purpose.* This subpart implements section 165(i)(2) of the Dodd-Frank Act (12 U.S.C. 5365(i)(2)), which requires a bank holding company with total consolidated assets of greater than $10 billion but less than $50 billion and savings and loan holding companies and state member banks with total consolidated assets of greater than $10 billion to conduct annual stress tests. This subpart also establishes definitions of stress test and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

### § 252.152 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Advanced approaches* means the regulatory capital requirements at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(b) *Adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank that are more adverse than those associated with the baseline scenario and may include trading or other additional components.

(c) *Asset threshold* means—

(1) For a bank holding company, average total consolidated assets of greater than $10 billion but less than $50 billion, and

(2) For a savings and loan holding company or state member bank, average total consolidated assets of greater than $10 billion.

(d) *Average total consolidated assets* means the average of the total consolidated assets as reported by a bank holding company, savings and loan holding company, or state member bank on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) or Consolidated Report of Condition and Income (Call Report), as

applicable, for the four most recent consecutive quarters. If the bank holding company, savings and loan holding company, or state member bank has not filed the FR Y–9C or Call Report, as applicable, for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C or Call Report, as applicable, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C or Call Report, as applicable, used in the calculation of the average.

(e) *Bank holding company* has the same meaning as in section 225.2(c) of the Board's Regulation Y (12 CFR 225.2(c)).

(f) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank, and that reflect the consensus views of the economic and financial outlook.

(g) *Capital action* has the same meaning as in section 225.8(c)(2) of the Board's Regulation Y (12 CFR 225.8(c)(2)).

(h) *Covered company subsidiary* means a state member bank that is a subsidiary of a covered company as defined in subpart F of this part.

(i) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(j) *Foreign banking organization* has the same meaning as in section 211.21(o) of the Board's Regulation K (12 CFR 211.21(o)).

(k) *Planning horizon* means the period of at least nine quarters, beginning on the first day of a stress test cycle (on October 1) over which the relevant projections extend.

(l) *Pre-provision net revenue* means the sum of net interest income and non-interest income less expenses before adjusting for loss provisions.

(m) *Provision for loan and lease losses* means the provision for loan and lease losses as reported by the bank holding company, savings and loan holding company, or state member bank on the FR Y–9C or Call Report, as appropriate.

(n) *Regulatory capital ratio* means a capital ratio for which the Board established minimum requirements for the company by regulation or order, including, as applicable, a company's tier 1 and supplementary leverage ratio and common equity tier 1, tier 1, and total risk-based capital ratios as calculated under the Board's regulations, including appendices A, D, E, and G to 12 CFR part 225 and appendices A, B, E, and F to 12 CFR part 208 and 12 CFR part 217, as applicable, including the transition provisions at 12 CFR 217.1(f)(4) and 12 CFR 217.300, or any successor regulation. For state member banks other than covered company subsidiaries and for all bank holding companies, for the stress test cycle that commences on October 1, 2013, regulatory capital ratios must be calculated pursuant to the regulatory capital framework set forth in 12 CFR part 225, appendix A, and not the regulatory capital framework set forth in 12 CFR part 217.

(o) *Savings and loan holding company* has the same meaning as in § 238.2(m) of the Board's Regulation LL (12 CFR 238.2(m)).

(p) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank that the Board annually determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline, adverse, and severely adverse scenarios.

(q) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a bank holding company, savings and loan holding company, or state member bank and that overall are more severe than those associated with the adverse scenario and may include trading or other additional components.

(r) *State member bank* has the same meaning as in § 208.2(g) of the Board's Regulation H (12 CFR 208.2(g)).

(s) *Stress test* means a process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a bank holding company, savings and loan holding company, or state member bank over the planning horizon, taking into account the current condition, risks, exposures, strategies, and activities.

(t) *Stress test cycle* means the period between October 1 of a calendar year and September 30 of the following calendar year.

(u) *Subsidiary* has the same meaning as in § 225.2(o) the Board's Regulation Y (12 CFR 225.2(o)).

**§ 252.153 Applicability.**

(a) *Compliance date for bank holding companies and state member banks that meet the asset threshold on or before December 31, 2012*—(1) *Bank holding companies*—(i) *In general.* Except as provided in paragraph (a)(1)(ii) of this section, a bank holding company that meets the asset threshold on or before December 31, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.[10]

(ii) *SR Letter 01–01.* A U.S.-domiciled bank holding company that is a subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01–01 issued by the Board (as in effect on May 19, 2010) must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2015, unless that time is extended by the Board in writing.

(2) *State member banks.* (i) A state member bank that meets the asset threshold as of November 15, 2012, and is a subsidiary of a bank holding company that participated in the 2009 Supervisory Capital Assessment Program, or a successor to such bank holding company, must comply with the requirements of this subpart beginning with the stress test cycle that commences on November 15, 2012, unless that time is extended by the Board in writing.

(ii) A state member bank that meets the asset threshold on or before December 31, 2012, and is not described in paragraph (a)(2)(i) of this section must comply with the requirements of this subpart beginning with the stress test cycle that commences on October 1, 2013, unless that time is extended by the Board in writing.[11]

(b) *Compliance date for bank holding companies and state member banks that meet the asset threshold after December 31, 2012.* A bank holding company or state member bank that meets the asset threshold after December 31, 2012, must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company meets the asset threshold, unless that time is extended by the Board in writing.

(c) *Compliance date for savings and loan holding companies.* (1) A savings and loan holding company that meets the asset threshold on or before the date on which it is subject to minimum regulatory capital requirements must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company becomes subject to the Board's minimum regulatory capital

[10] *See* § 252.152(m).

[11] *See* § 252.152(m).

requirements, unless the Board accelerates or extends the compliance date.

(2) A savings and loan holding company that meets the asset threshold after the date on which it is subject to minimum regulatory capital requirements must comply with the requirements of this subpart beginning with the stress test cycle that commences in the calendar year after the year in which the company becomes subject to the Board's minimum regulatory capital requirements, unless that time is extended by the Board in writing.

(d) *Ongoing application.* A bank holding company, savings and loan holding company, or state member bank that meets the asset threshold will remain subject to the requirements of this subpart unless and until its total consolidated assets fall below $10 billion for each of four consecutive quarters, as reported on the FR Y–9C or Call Report, as applicable. The calculation will be effective on the as-of date of the fourth consecutive FR Y–9C or Call Report, as applicable.

(e) *Interaction with 12 CFR part 252, subpart G.* Notwithstanding paragraph (d) of this section, a bank holding company or savings and loan holding company that becomes a covered company as defined in subpart G of this part and conducts a stress test pursuant to that subpart is not subject to the requirements of this subpart.

(f) *Advanced approaches.* Notwithstanding any other requirement in this section, for a given stress test cycle, a bank holding company, savings and loan holding company, or state member bank's estimates of its pro forma regulatory capital ratios over the planning horizon shall not include estimates using the advanced approaches if the company is notified on or after the first day of that stress test cycle that it is required to calculate its risk-based capital requirements using the advanced approaches.

**§ 252.154 Annual stress test.**

(a) *General requirements*—(1) *Savings and loan holding companies with average total consolidated assets of $50 billion or more and state member banks that are covered company subsidiaries.* A savings and loan holding company with average total consolidated assets of $50 billion or more or a state member bank that is a covered company subsidiary or must conduct a stress test by January 5 of each calendar year based on data as of September 30 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(2) *Bank holding companies, savings and loan holding companies with total consolidated assets of less than $50 billion, and state member banks that are not covered company subsidiaries.* Except as provided in paragraph (a)(1), a bank holding company, savings and loan holding company, or state member bank must conduct a stress test by March 31 of each calendar year using financial statement data as of September 30 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) *Scenarios provided by the Board.* (1) *In general.* In conducting a stress test under this section, a bank holding company, savings and loan holding company, or state member bank must use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios to each bank holding company, savings and loan holding company, or state member bank no later than November 15 of that calendar year.

(2) *Additional components.* (i) The Board may require a bank holding company, savings and loan holding company, or state member bank with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section. The Board may also require a state member bank that is subject to 12 CFR part 208, appendix E and that is a subsidiary of a bank holding company subject to this § 252.154(b)(2)(i) or 12 CFR 252.144(b)(2)(i) to include a trading and counterparty component in the state member bank's adverse and severely adverse scenarios in the stress test required by this section. The data used in this component will be as of a date between October 1 and December 1 of that calendar year selected by the Board, and the Board will communicate the as-of date and a description of the component to the company no later than December 1 of the calendar year.

(ii) The Board may require a bank holding company, savings and loan holding company, or state member bank to include one or more additional components in its adverse and severely adverse scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(3) *Additional scenarios.* The Board may require a bank holding company, savings and loan holding company, or state member bank to include one or more additional scenarios in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(4) *Notice and response.* If the Board requires a bank holding company, savings and loan holding company, or state member bank to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2)(ii) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing no later than September 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s). Within 14 calendar days of receipt of a notification under this paragraph, the bank holding company, savings and loan holding company, or state member bank may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request. The Board will provide the bank holding company, savings and loan holding company, or state member bank with a description of any additional component(s) or additional scenario(s) by December 1.

**§ 252.155 Methodologies and practices.**

(a) *Potential impact on capital.* In conducting a stress test under § 252.154, for each quarter of the planning horizon, a bank holding company, savings and loan holding company, or state member bank must estimate the following for each scenario required to be used:

(1) Losses, pre-provision net revenue, provision for loan and lease losses, and net income; and

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios and any other capital ratios specified by the Board), incorporating the effects of any capital actions over the planning horizon and maintenance of an allowance for loan losses appropriate for credit exposures throughout the planning horizon.

(b) *Assumptions regarding capital actions.* In conducting a stress test under § 252.154 of this part, a bank holding company or savings and loan

holding company is required to make the following assumptions regarding its capital actions over the planning horizon—

(A) For the first quarter of the planning horizon, the bank holding company or savings and loan holding company must take into account its actual capital actions as of the end of that quarter; and

(B) For each of the second through ninth quarters of the planning horizon, the bank holding company or savings and loan holding company must include in the projections of capital—

(i) Common stock dividends equal to the quarterly average dollar amount of common stock dividends that the company paid in the previous year (that is, the first quarter of the planning horizon and the preceding three calendar quarters);

(ii) Payments on any other instrument that is eligible for inclusion in the numerator of a regulatory capital ratio equal to the stated dividend, interest, or principal due on such instrument during the quarter; and

(iii) An assumption of no redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio.

(c) *Controls and oversight of stress testing processes*—(1) *In general.* The senior management of a bank holding company, savings and loan holding company, or state member bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws, regulations, and supervisory guidance.

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a bank holding company, savings and loan holding company, or state member bank must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than annually. The board of directors and senior management of the bank holding company, savings and loan holding company, or state member bank must receive a summary of the results of the stress test conducted under this section.

(3) *Role of stress testing results.* The board of directors and senior management of a bank holding company, savings and loan holding company, or state member bank must consider the results of the stress test in the normal course of business, including but not limited to, the banking organization's capital planning, assessment of capital adequacy, and risk management practices.

**§ 252.156 Reports of stress test results.**

(a) *Reports to the Board of stress test results*—(1) *Savings and loan holding companies with average total consolidated assets of $50 billion or more and state member banks that are covered company subsidiaries.* A savings and loan holding company with average total consolidated assets of $50 billion or more or a state member bank that is a covered company subsidiary must report the results of the stress test to the Board by January 5 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(2) *Bank holding companies, savings and loan holding companies, and state member banks.* Except as provided in paragraph (a)(1) of this section, a bank holding company, savings and loan holding company, or state member bank must report the results of the stress test to the Board by March 31 of each calendar year in the manner and form prescribed by the Board, unless that time is extended by the Board in writing.

(b) *Contents of reports.* The report required under paragraph (a) of this section must include, under the baseline scenario, adverse scenario, severely adverse scenario, and any other scenario required under § 252.154(b)(3) of this part, a description of the types of risks being included in the stress test; a summary description of the methodologies used in the stress test; and, for each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for loan and lease losses, net income, and regulatory capital ratios. In addition, the report must include an explanation of the most significant causes for the changes in regulatory capital ratios and any other information required by the Board. This paragraph will remain applicable until such time as the Board issues a reporting form to collect the results of the stress test required under § 252.154 of this part.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this subpart and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

**§ 252.157 Disclosure of stress test results.**

(a) *Public disclosure of results*—(1) *In general.* (i) Except as provided in paragraph (a)(1)(ii) or (b)(2) of this section, a bank holding company, savings and loan holding company, or state member bank must disclose a summary of the results of the stress test in the period beginning on June 15 and ending on June 30 unless that time is extended by the Board in writing.

(ii) Except as provided in paragraph (b)(2) of this section, a state member bank that is a covered company subsidiary or a savings and loan holding company with average total consolidated assets of $50 billion or more must disclose a summary of the results of the stress test in the period beginning on March 15 and ending on March 31, unless that time is extended by the Board in writing.

(2) *Initial disclosure.* A bank holding company, savings and loan holding company, or state member bank that has total consolidated assets of less than $50 billion on or before December 31, 2012, must comply with the requirements of this section beginning with the stress test cycle commencing on October 1, 2014.

(3) *Disclosure method.* The summary required under this section may be disclosed on the Web site of a bank holding company, savings and loan holding company, or state member bank, or in any other forum that is reasonably accessible to the public.

(b) *Summary of results*—(1) *Bank holding companies and savings and loan holding companies.* A bank holding company or savings and loan holding company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(i) A description of the types of risks included in the stress test;

(ii) A summary description of the methodologies used in the stress test;

(iii) Estimates of—

(A) Aggregate losses;

(B) Pre-provision net revenue;

(C) Provision for loan and lease losses;

(D) Net income; and

(E) Pro forma regulatory capital ratios and any other capital ratios specified by the Board;

(iv) An explanation of the most significant causes for the changes in regulatory capital ratios; and

(v) With respect to a stress test conducted by an insured depository institution subsidiary of the bank holding company or savings and loan

holding company pursuant to section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, changes in regulatory capital ratios and any other capital ratios specified by the Board of the depository institution subsidiary over the planning horizon, including an explanation of the most significant causes for the changes in regulatory capital ratios.

(2) *State member banks that are subsidiaries of bank holding companies.* A state member bank that is a subsidiary of a bank holding company will satisfy the public disclosure requirements under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act when the bank holding company publicly discloses summary results of its stress test pursuant to this section or section 252.148 of this part, unless the Board determines that the disclosures at the holding company level do not adequately capture the potential impact of the scenarios on the capital of the state member bank. In this case, the state member bank must make the same disclosure as required by paragraph (b)(3) of this section.

(3) *State member banks that are not subsidiaries of bank holding companies.* A state member bank that is not a subsidiary of a bank holding company must disclose, at a minimum, the following information regarding the severely adverse scenario:

(i) A description of the types of risks being included in the stress test;

(ii) A summary description of the methodologies used in the stress test;

(iii) Estimates of—

(A) Aggregate losses;

(B) Pre-provision net revenue

(C) Provision for loan and lease losses;

(D) Net income; and

(E) Pro forma regulatory capital ratios and any other capital ratios specified by the Board; and

(iv) An explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Content of results.* (1) The disclosure of aggregate losses, pre-provision net revenue, provision for loan and lease losses, and net income that is required under paragraph (b) of this section must be on a cumulative basis over the planning horizon.

(2) The disclosure of pro forma regulatory capital ratios and any other capital ratios specified by the Board that is required under paragraph (b) of this section must include the beginning value, ending value and minimum value of each ratio over the planning horizon.

By order of the Board of Governors of the Federal Reserve System, September 24, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2013–23619 Filed 9–27–13; 8:45 am]

**BILLING CODE 6210–01–P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 125

**RIN 3245–AG22**

### Small Business Subcontracting: Correction

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations [FR Doc. 2013–169671, which were published in the **Federal Register** on Tuesday, July 16, 2013 (78 FR 42391). The document amended SBA's regulations governing small business subcontracting to implement provisions of the Small Business Jobs Act of 2010.

This correction amends a cross-reference contained in the regulations.

**DATES:** Effective September 30, 2013 and is applicable beginning August 15, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Koppel, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., 8th Floor, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 16, 2013, at 78 FR 42392 (available at *http://www.gpo.gov/fdsys/pkg/FR-2013-07-16/pdf/2013-16967.pdf).* SBA published a final rule on subcontracting to implement provisions of the Small Business Jobs Act of 2010.

The final rule established SBA's policies for subcontracting compliance, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices. Need for correction.

As published, the final regulations contain incorrect cross-references which may prove to be misleading and need to be clarified. The cross reference in 13 CFR section 125.3(g)(4) to ''paragraphs (g)(2)(i) and (g)(2)(ii)'' is corrected to refer to ''paragraphs (g)(1)(i) and (g)(1)(ii).''

#### List of Subjects in 13 CFR Part 125

Government contracting programs, Small business subcontracting program.

Accordingly, 13 CFR Part 125 is corrected by making the following correcting amendments:

### PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for part 125 continues to read as follows:

**Authority:** 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f); Pub. L. 111–240, section 1321.

**§ 125.3 [Amended]**

■ 2. Amend paragraph (g)(4) of § 125.3 to read as follows:

**§ 125.3 Subcontracting assistance.**

* * * * *

(g) * * *

(4) A contracting officer shall include a significant evaluation factor for the criteria described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section in a bundled contract or order as defined in § 125.2.

* * * * *

Dated: September 19, 2013.

**Calvin Jenkins,**

*Deputy Associate Administrator for Government Contracting and Business Development.*

[FR Doc. 2013–23257 Filed 9–27–13; 8:45 am]

**BILLING CODE 8025–01–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0985; Directorate Identifier 2011–NM–250–AD; Amendment 39–17585; AD 2013–19–03]**

**RIN 2120–AA64**

### Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by a report of chafing damage to a wire bundle that was arcing to hydraulic tubing and caused by insufficient separation between the wire bundle and the hydraulic tubing in the main landing gear (MLG) wheel well. This AD requires an inspection for damage of wire bundles and hydraulic tubing on the right side of the forward bulkhead of the MLG wheel well; installation of new clamps; and corrective actions, as applicable. We are issuing this AD to detect and correct possible damage caused by insufficient separation between the wire bundles and hydraulic

tubing to prevent electrical arcing in a flammable fluid leakage zone, which could lead to a wheel well fire.

**DATES:** This AD is effective November 4, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 4, 2013.

**ADDRESSES:** 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.

**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 address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6418; fax: (425) 917–6590; email: *marie.hogestad@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on September 20, 2012 (77 FR 58334). The NPRM proposed to require an inspection for damage of wire bundles and hydraulic tubing on the right side of the forward bulkhead of the MLG wheel well; installation of new clamps; and corrective actions, as applicable.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 58334, September 20, 2012) and the FAA's response to each comment.

**Request To Refer to Revised Service Information**

United Airlines (United) requested that we refer to the latest revision of the service information in this final rule.

We agree with United's request, since Boeing has issued Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013. That service information removes airplanes from the effectivity, which were reworked during production and on which the change specified in Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013, has already been incorporated. We have revised paragraph (g) of this final rule to refer to that revised service information, added a new paragraph (h) to this final rule to allow credit for previous actions done using Boeing Special Attention Service Bulletin 737–29–1113, dated March 23, 2011. Subsequent paragraphs have been redesignated accordingly.

**Request To Clarify Source of Applicability Exclusions**

American Airlines (American), Delta Airlines (Delta), and United requested that we revise the NPRM (77 FR 58334, September 20, 2012) to clarify the source of the airplane line numbers excluded from the applicability paragraph which do not appear in Boeing Special Attention Service Bulletin 737–29–1113, dated March 23, 2011, or in Boeing Service Bulletin Information Notice 737–29–1113 IN 01, dated May 20, 2011, and correct the source of the applicability information in the ''Differences Between the Proposed AD and the Service Information'' paragraph.

We partially agree. Boeing identified those airplanes that were reworked during production, and communicated the excluded line numbers to the FAA prior to the issuance of the NPRM (77 FR 58334, September 20, 2012). Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013, reduced the number of affected airplanes. We have revised paragraph (c) of this final rule to identify those airplanes which are affected by this AD. Because the ''Differences Between Proposed AD and the Service Information'' paragraph is not restated in the preamble of the final rule, we have not made any change to the final rule in that regard.

**Request To Simplify Applicability**

United requested that the applicability statement of the NPRM (77 FR 58334, September 20, 2012) be simplified to clearly state which airplanes are affected by the AD.

We agree with United's request. We have revised paragraph (c) of this final rule to match the line numbers as listed in Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013. We have coordinated this change with Boeing.

**Request To Clarify Applicability**

United requested that the applicability statement of the NPRM (77 FR 58334, September 20, 2012) be clarified since it differs from the service bulletin. United stated that Boeing Special Attention Service Bulletin 737–29–1113, dated March 23, 2011, contains a conditional statement for the required clamp installation based on whether there is sufficient separation between the wire bundle and hydraulic tubing. United reasoned that operators may elect not to install new clamps if they find sufficient separation between the wire bundling and hydraulic tubing.

We disagree with United's request because the NPRM (77 FR 58334, September 20, 2012) did not include the implied conditional applicability. This final rule applies to all airplanes listed in paragraph (c) of this AD regardless of separation between the hydraulic tubing and wire bundles. We have changed paragraph (c) of this AD to match the line numbers as listed in Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013, since this new revision of the service bulletin was released since the issuance of the NPRM.

**Request To Verify Excluded Airplane Line Numbers (L/Ns) Are Correct**

American and Delta requested that the FAA verify the excluded airplane L/Ns are correct in paragraph (c) ''Applicability'' of the NPRM (77 FR 58334, September 20, 2012) because there were discrepancies between the NPRM, Boeing Service Bulletin Information Notice (IN) 737–29–1113 IN 01, dated May 20, 2011, and Boeing Special Attention Service Bulletin 737–29–1113, dated March 23, 2011. American and Delta stated they had airplanes that should not be included in the effectivity since they did not have the hydraulic tubing that is referred to in the service information installed. American and Delta confirmed through a review of the applicable airplane illustrated parts catalogs that certain L/Ns did not have the hydraulic tubing

installed (i.e. American L/Ns 3307, 3328, 3334, 3340, and 3347; Delta L/N 3338). American stated that two of its airplanes did have the hydraulic tubing installed (American L/Ns 3291 and 3298).

We agree to provide clarification. The airplane L/Ns listed by both American and Delta are excluded airplane L/Ns. The FAA has verified with Boeing that the correct airplane L/Ns are listed in the NPRM (77 FR 58334, September 20, 2012) and match the airplane L/Ns in Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013. As stated previously, we have revised paragraph (c) of this final rule to identify those airplanes that are affected by this AD. This change has been coordinated with Boeing.

**Request To Add Inspection for Clamps Already Installed**

United requested that the NPRM (77 FR 58334, September 20, 2012) be revised to include an inspection to look for clamps already installed prior to performing the required work, and if found, to check the part number of the subject clamp. United stated that if the clamp is not a part number listed in Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013, it should be replaced. United stated it found at least one aircraft with clamps installed on the right side of the forward bulkhead of the MLG wheel well and that it has revised its work instructions to include the clamp installation and part number inspection.

We disagree with United's request to add an inspection to look for clamps already installed prior to performing the required work because Boeing has confirmed that the airplane mentioned by United is among those listed as an excluded line number, meaning it was already reworked during production. Because both this final rule and Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013, require installation of new clamps with the correct part number, we have not made any change to this final rule in that regard.

**Statement Regarding Installation of Winglets**

Aviation Partners Boeing (APB) stated that the installation of winglets per supplemental type certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A78625788800604 56C?OpenDocument&Highlight=st00830se*) does not affect the actions specified in the NPRM (77 FR 58334, September 20, 2012).

We concur. We have redesignated paragraph (c) of the NPRM (77 FR 58334, September 20, 2012) as paragraph (c)(1) in this final rule, added paragraph (c)(2) to this final rule, which states that STC ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7 862578880060456C?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 Section 39.17 of the Federal Aviation Regulations (14 CFR 39.17). For all other AMOC requests, the operator must request approval of an AMOC in accordance with the procedures specified in paragraph (i) of this AD.

**Conclusion**

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 58334, September 20, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 58334, September 20, 2012).

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

**Costs of Compliance**

We estimate that this AD affects 520 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection and installation ..... | 2 work-hours × $85 per hour = $170 ..... | $0 | $170 | $88,400 |

We have received no definitive data that would enable us to provide labor cost estimates for the on-condition actions (repairing or replacing of damaged wire bundles and damaged hydraulic tubing) specified in this AD.

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**

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, and

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–19–03 The Boeing Company:** Amendment 39–17585; Docket No. FAA–2012–0985; Directorate Identifier 2011–NM–250–AD.

**(a) Effective Date**

This AD is effective November 4, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

(1) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, line numbers (L/Ns) 1060 through 3289 inclusive, and 3294, but excluding L/Ns 3138, 3158, 3169, 3175, 3216, 3224, 3253, and 3274.

(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.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 29, Hydraulic Power.

**(e) Unsafe Condition**

This AD was prompted by a report of chafing damage to a wire bundle that was arcing to hydraulic tubing and caused by insufficient separation between the wire bundle and the hydraulic tubing in the main landing gear (MLG) wheel well. We are issuing this AD to detect and correct possible damage caused by insufficient separation between the wire bundles and hydraulic tubing to prevent electrical arcing in a flammable fluid leakage zone, which could lead to a wheel well fire.

**(f) Compliance**

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

**(g) Inspection and Installation**

Within 24 months after the effective date of this AD: Do a general visual inspection of hydraulic tubing having part numbers (P/Ns) 272A4451–136 and 272A4451–137, and wire bundles W6128, W7122, W8122, and W8222 for wire chafing or damage, install new clamps in the right MLG wheel well, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013. All corrective actions must be done before further flight.

**(h) Credit for Previous Actions**

This paragraph provides credit for the corresponding actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–29–1113, dated March 23, 2011, which is not incorporated by reference in this AD.

**(i) 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 (j)(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.

**(j) Related Information**

(1) For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6418; fax: (425) 917–6590; email: *marie.hogestad@faa.gov.*

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

**(k) Material Incorporated by Reference**

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

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

(i) Boeing Special Attention Service Bulletin 737–29–1113, Revision 1, dated March 29, 2013.

(ii) Reserved.

(3) 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.*

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

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

Issued in Renton, Washington, on September 10, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–23464 Filed 9–27–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0723; Directorate Identifier 2011–NM–137–AD; Amendment 39–17586; AD 2013–19–04]**

**RIN 2120–AA64**

## Airworthiness Directives; the Boeing Company Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD was prompted by a

report of cracks found in the skin at body station (STA) 540 just below stringer S–22L on a Model 737–700 series airplane. This AD requires repetitive detailed and high frequency eddy current inspections for cracking of the skin around the eight fasteners common to the ends of the STA 540 bulkhead chords between stringers S–22 and S–23, left and right sides; and corrective actions and preventive modification if necessary. We are issuing this AD to detect and correct fatigue cracking in the skin, which can result in rapid decompression of the cabin.

**DATES:** This AD is effective November 4, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 4, 2013.

**ADDRESSES:** 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. The NPRM published in the **Federal Register** on July 25, 2012 (77 FR 43547). The NPRM proposed to require repetitive detailed and high frequency eddy current (HFEC) inspections for cracking of the skin around the eight fasteners common to the ends of the STA 540 bulkhead chords between stringers S–22 and S–23, left and right sides; and corrective actions and preventive modification if necessary.

**Comments**

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 43547, July 25, 2012) and the FAA's response to each comment.

**Concurrence**

The Boeing Company concurred with the content of the NPRM (77 FR 43547, July 25, 2012).

**Support of Compliance Time**

AirTran/Southwest Airlines stated that the inspection threshold and intervals will fit within its planned scheduled maintenance checks. The commenter also stated that the number of man-hours and elapsed time to accomplish the NPRM (77 FR 43547, July 25, 2012) will not impact the overall span-time of its planned scheduled maintenance check.

**Request To Change the Compliance Time**

American Airlines requested that all airplanes have the same compliance time of 26,500 total flight cycles with a grace period of 6,500 flight cycles. The commenter explained that since the NPRM (77 FR 43547, July 25, 2012) is for the same type of airplanes with the same condition, they should have the same compliance time regardless of the amount of flight cycles at the time of the AD release date. The commenter noted that the NPRM specifies a compliance time of 18,000 total flight cycles with a grace period of 4,000 flight cycles for airplanes with less than 27,500 total flight cycles. The commenter also stated that the 4,000 flight cycle grace period does not allow enough time for operators to have two good opportunities to accomplish the inspections during normal maintenance visits.

We disagree with changing the compliance times. In developing appropriate compliance times for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. The shorter compliance time for airplanes with higher number of total flight cycles addresses the increased likelihood of cracking or larger cracks being present. Under the provisions of paragraph (l) of this final rule, we will consider requests for approval of an adjustment of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. No change has been made to this final rule in this regard.

**Request for Increased Repetitive Inspection Intervals**

American Airlines requested that the repetitive inspection interval of 4,000 flight cycles specified in the NPRM (77 FR 43547, July 25, 2012) be changed to at least 8,000 flight cycles to coordinate with heavy maintenance visits to provide the least amount of impact during the maintenance visit. The commenter stated that it does not believe that we have provided sufficient evidence to warrant such a tight repetitive inspection interval if no cracks are found after the initial inspection. The commenter also noted that since this crack has only been found on one airplane, it is not certain how susceptible the rest of the fleet is to develop skin cracks at body station (BS)540.

We disagree with increasing the repetitive inspection interval. In developing an appropriate repetitive inspection interval for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. The interval was determined using the same methodology as for other cracks of primary structure addressed in other airworthiness directives. No data has been offered that would substantiate a change to this final rule. Under the provisions of paragraph (l) of this final rule, we will consider requests for approval of an adjustment of the repetitive inspection interval if sufficient data are submitted to substantiate that the new interval would provide an acceptable level of safety. No change has been made to this final rule in this regard.

**Request To Change Cost Estimate**

American Airlines requested that we change the Cost of Compliance table to account for the removal and installation of the ram air transition duct and the

recirculation air filter housing. American Airlines stated the ram air transition duct must be removed to accomplish the inspection of the skin around the 8 fasteners and will add an additional 2 work-hours (open and close) for each airplane. American Airlines requested that the labor cost for the inspection be changed to 5 work-hours rather than the estimated 3 work-hours specified in the NPRM (77 FR 43547, July 25, 2012) to include the removal and installation of the ram air transition duct. American Airlines also stated that the recirculation air filter housing must be removed to accomplish the preventative modification and will add an additional 6 work-hours (open and close) for each airplane. American Airlines also noted that the current price for the modification kit is $993, rather than $894 as referenced in the NPRM (77 FR 43547, July 25, 2012).

We partially agree with the request to change the Cost of Compliance table. We disagree with the figures used by the commenter. The work-hours, however, have been revised in Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013. The Cost of Compliance table has been revised accordingly.

**Request To Allow the Use of Grip Length Adjustment Washers**

AirTran/Southwest Airlines requested that we add Note 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, to allow the use of grip length adjustment washers to accomplish the NPRM (77 FR 43547, July 25, 2012).

We disagree. Note 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013 (previously Note 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011), states, ''If the length of any fastener specified in this service bulletin does not meet the installation standards in SRM [structural repair manual] Chapter 51, then a fastener of the same specification, or an approved substitute, with a length which meets the installation standards in SRM Chapter 51 may be used.'' Since the installation standards of Section 51 of the SRM include the use of grip length adjustment washers, no additional authorization is necessary. No change has been made to this final rule in this regard.

**Request To Remove or Modify Paragraph (i)(4) of the NPRM (77 FR 43547, July 25, 2012)**

AirTran/Southwest Airlines requested that paragraph (i)(4) of the NPRM (77 FR 43547, July 25, 2012) be removed. AirTran/Southwest Airlines requested that we allow the operator to determine the sequence in which steps are to be accomplished for the inspections and modifications, otherwise, the operators may inadvertently violate the AD by performing unrelated tasks out of sequence.

American Airlines requested that we remove or modify paragraph (i)(4) of the NPRM (77 FR 43547, July 25, 2012) stating that paragraph (i)(4) is more restrictive than necessary to ensure safety of flight. American Airlines stated that not being able to accomplish some steps out of order will prevent accomplishment of the AD in a timely manner. American Airlines suggested modifying paragraph (i)(4) of the NPRM (77 FR 43547, July 25, 2012) to allow the modifications and repairs to be accomplished in any order as long as the steps within those actions are accomplished in order.

We agree to remove paragraph (i)(4) of the NPRM (77 FR 43547, July 25, 2012). We have received Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, which removes instructions regarding the sequencing of steps and changes certain part numbers. We have revised paragraphs (c), (g), (h), (i), and (j) of this final rule to refer to Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013. We have also added new paragraph (k) to this final rule to allow credit for the actions required by paragraphs (g), (h), (i), and (j) of this AD, if those actions were performed before the effective date of this final rule using Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011. Subsequent paragraphs have been redesignated accordingly.

**Request To Allow Removal of Additional or Fewer Parts, and Include Jacking and Shoring Limitations**

AirTran/Southwest Airlines requested that we include a statement stating that it is acceptable to remove additional, or fewer, parts as necessary; however, jacking and shoring limitations must be observed.

We partially agree with the request. We agree that clarification is needed regarding removal of additional or fewer parts. We infer that this comment concerns instructions in Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, regarding access and restoration, which are not required to address the unsafe condition. However, we disagree with requiring jacking and shoring limitations in this final rule because those actions are not required to address the unsafe condition. Operators may perform those actions in accordance with approved maintenance procedures. We have added new paragraph (i)(4) to this final rule to state that access and close actions identified in Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, are not required by this final rule. We have also revised paragraphs (g) and (h) of this final rule to refer to paragraph (i)(4) of this final rule.

**STC Winglet Comment**

Aviation Partners Boeing stated that the installation of winglets per STC ST00830SE does not affect them.

We have redesignated paragraph (c) of the NPRM (77 FR 43547, July 25, 2012) as paragraph (c)(1) in this AD and added paragraph (c)(2) to this AD to state that installation of 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 final rule. 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 (l) of this final rule.

**Conclusion**

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 43547, July 25, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 43547, July 25, 2012).

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

**Costs of Compliance**

We estimate that this AD affects 903 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection (left and right sides). | 14 work-hours × $85 per hour = $1,190 per inspection cycle. | $0 | $1,190 per inspection cycle. | $1,074,570 per inspection cycle. |

We estimate the following costs to do any necessary repairs and inspections that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Preventive modification (each side). | 7 work-hours × $85 per hour = $595 | $894 | $1,489. |
| Skin repair (each side) | 37 work-hours × $85 per hour = $3,145 | Up to $5,635 | Up to $8,780. |

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**

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, and

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2013–19–04 the Boeing Company:** Amendment 39–17586; Docket No. FAA–2012–0723; Directorate Identifier 2011–NM–137–AD.

**(a) Effective Date**

This AD is effective November 4, 2013.

**(b) Affected ADs**

None.

**(c) Applicability**

(1) This AD applies to the Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013.

(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 (l) of this AD.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by a report of cracks found in the skin at body station (STA) 540 just below stringer S–22L. We are issuing this AD to detect and correct fatigue cracking in the skin, which can result in rapid decompression of the cabin.

**(f) Compliance**

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

**(g) Inspection and Corrective Action**

(1) Except as required by paragraphs (g)(2), (i)(2), and (i)(3) of this AD, at the applicable time specified in table 1 of paragraph 1.E.

''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013: Do detailed and high frequency eddy current (HFEC) inspections of the skin for cracking in the area around the eight fasteners securing the STA 540 bulkhead chords between stringers S–22 and S–23, and do all applicable corrective actions, in accordance with Parts 1, 2, 3, 4, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, except as required by paragraphs (i)(1) and (i)(4) of this AD. If no cracking is found, repeat the detailed and HFEC inspections at the intervals specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, except as required by paragraph (g)(2) of this AD, until the optional preventive modification specified in paragraph (h) of this AD is done. Do all applicable corrective actions before further flight.

(2) For airplanes that have incorporated Boeing Business Jet Lower Cabin Altitude Supplemental Type Certificate (STC) ST01697SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/0812969A86AF879B8625766400600105?OpenDocument&Highlight=st01697se*) (6,500 feet maximum cabin altitude in lieu of 8,000 feet), the flight-cycle related compliance times are different from those specified in Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013. All initial compliance times specified in total flight cycles or flight cycles must be reduced to half of those specified in Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013. All repetitive interval compliance times specified in flight cycles must be reduced to one-quarter of those specified in Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013.

**(h) Optional Preventive Modification**

Accomplishing the preventive modification, including an HFEC inspection for cracking of the skin and STA 540 bulkhead chords, and all applicable repairs, in accordance with paragraph 3.B, Part 2 or Part 4 (left side), and Part 3 or Part 5 (right side), of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, terminates the inspection requirements of paragraph (g) of this AD for the side on which the modification is done, except as required by paragraphs (i)(1) and (i)(4) of this AD.

**(i) Exceptions to Service Bulletin Specifications**

(1) If any cracking is found during any inspection required by this AD, and Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) Where Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, specifies to do the action after the original issue date of that service bulletin, this AD requires the compliance time after the effective date of this AD.

(3) Where the Condition column of table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, specifies a condition as of the original issue date of that service bulletin, this AD specifies the condition as of the effective date of this AD.

(4) The access and restoration instructions identified in the Work Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, are not required by this AD. Operators may perform those actions in accordance with approved maintenance procedures.

**(j) Post-Repair Inspections**

The post-repair inspections, specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, are not required by this AD.

**Note 1 to paragraph (j) of this AD:** The damage tolerance inspections specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, may be used in support of compliance with Section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The corresponding actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013, are not required by this AD.

**(k) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraphs (g), (h), and (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, which is not incorporated by reference in this AD.

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

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, it 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 Aircraft Certification Office (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 Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

(2) Service information referenced in this AD that is not incorporated by reference in this AD may be obtained at the addresses identified in paragraphs (n)(3) and (n)(4) of this AD.

**(n) Material Incorporated by Reference**

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

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

(i) Boeing Special Attention Service Bulletin 737–53–1294, Revision 1, dated June 14, 2013.

(ii) Reserved.

(3) 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.*

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

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

Issued in Renton, Washington, on September 9, 2013.

**Jeffrey E. Duven,**

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

[FR Doc. 2013–22676 Filed 9–27–13; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0517; Airspace Docket No. 13–ANM–15]**

## Establishment of Class E Airspace; Cody, WY

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at the Cody VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) navigation aid, Cody, WY, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City Air Route Traffic Control Center (ARTCC). This improves the safety and management of IFR operations within the National Airspace System.

**DATES:** Effective date, 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

## History

On July 3, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Cody, WY (78 FR 40078). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

## The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, at the Cody VOR/DME navigation aid, Cody, WY, to accommodate IFR aircraft under control of Salt Lake City ARTCC by vectoring aircraft from en route airspace to terminal areas. This action ensures the safety and management of IFR operations.

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

## Environmental Review

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends

14 CFR Part 71 as follows:

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

*Paragraph 6006 En Route Domestic Airspace Areas.*

* * * * *

**ANM WY E6 Cody, WY [New]**

Cody VOR/DME, WY

(Lat. 44°37′14″ N., long. 108°57′54″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 44°09′15″ N., long. 110°08′46″ W.; to lat. 44°19′00″ N., long. 112°04′36″ W.; to lat. 44°39′25″ N., long. 111°52′32″ W.; to lat. 45°32′41″ N., long. 111°17′39″ W.; to lat. 45°34′50″ N., long. 109°56′10″ W.; to lat. 45°03′06″ N., long. 109°22′15″ W.; to lat. 44°43′20″ N., long. 108°52′32″ W.; to lat. 45°08′46″ N., long. 107°33′33″ W.; to lat. 46°00′00″ N., long. 106°58′05″ W.; to lat. 45°48′16″ N., long. 106°34′25″ W.; to lat. 44°38′58″ N., long. 106°53′16″ W.; to lat. 44°09′12″ N., long. 108°02′32″ W.; to lat. 42°52′37″ N., long. 107°47′58″ W.; to lat. 42°15′53″ N., long. 108°06′44″ W.; to lat. 41°26′15″ N., long. 109°19′46″ W.; to lat. 41°41′49″ N., long. 109°29′35″ W.; to lat. 43°09′38″ N., long. 110°26′52″ W., thence to the point of beginning.

Issued in Seattle, Washington, on September 19, 2013.

**Christopher Ramirez,**

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

[FR Doc. 2013–23668 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–1185; Airspace Docket No. 12–AAL–8]**

## Establishment of Class E Airspace; White Mountain, AK

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at White Mountain Airport, White Mountain, AK, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Effective date, 0901 UTC, December 12, 2013. The Director of the Federal Register approves this

incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

### History

On December 21, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at White Mountain, Airport, White Mountain, AK (77 FR 75598). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface, at White Mountain Airport, White Mountain, AK. Controlled airspace within a 6.3 mile radius of the airport, with extensions to the northwest and southeast, is necessary to accommodate aircraft using new RNAV (GPS) standard instrument approach procedures to/from the en route environment at White Mountain Airport. This action is necessary for the safety and management of IFR operations at the airport.

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

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 White Mountain, AK [New]**

White Mountain Airport, AK
(Lat. 64°41′21″ N., long. 163°24′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the White Mountain Airport, and within 1 mile either side of the 344° bearing of the airport extending from the 6.3-radius to 11 miles northwest of the airport, and within 1 mile either side of the 164° bearing of the airport extending from the 6.3-radius to 11 miles southeast of the airport.

Issued in Seattle, Washington, on September 19, 2013.

**Christopher Ramirez,**

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

[FR Doc. 2013–23666 Filed 9–27–13; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0529; Airspace Docket No. 13–ANM–17]**

## Establishment of Class E Airspace; Glasgow, MT

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at the Glasgow VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) navigation aid, Glasgow, MT, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City, and Minneapolis Air Route Traffic Control Centers (ARTCCs). This improves the safety and management of IFR operations within the National Airspace System.

**DATES:** Effective date, 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### History

On July 10, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Glasgow, MT (78 FR 41337). Interested parties

were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route airspace extending upward from 1,200 feet above the surface, at the Glasgow VOR/DME navigation aid, Glasgow, MT, to accommodate IFR aircraft under control of Salt Lake City, and Minneapolis ARTCCs by vectoring aircraft from en route airspace to terminal areas. This action is necessary for the safety and management of IFR operations.

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

**Environmental Review**

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

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

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

*Paragraph 6006 En route domestic airspace areas.*

* * * * *

**ANM MT E6 Glasgow, MT [New]**

Glasgow VOR/DME, MT
(Lat. 48°12′55″ N., long. 106°37′32″ W.)
That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 49°00′00″ N., long. 109°11′00″ W.; to lat. 49°00′00″ N., long. 108°00′00″ W.; to lat. 49°00′00″ N., long. 107°00′00″ W.; to lat. 49°00′00″ N., long. 106°00′00″ W.; to lat. 49°00′00″ N., long. 105°30′00″ W.; to lat. 48°21′00″ N., long. 104°15′00″ W.; to lat. 46°45′10″ N., long. 103°00′00″ W.; to lat. 45°27′21″ N., long. 103°00′00″ W.; to lat. 45°28′48″ N., long. 103°10′00″ W.; to lat. 45°36′35″ N., long. 104°05′26″ W.; to lat. 45°48′16″ N., long. 106°34′25″ W.; to lat. 46°00′00″ N., long. 106°58′05″ W.; to lat. 46°54′00″ N., long. 108°49′30″ W., thence to the point of beginning.

Issued in Seattle, Washington, on September 19, 2013.

**Christopher Ramirez,**

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

[FR Doc. 2013–23669 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30920; Amdt. No. 3555]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective September 30, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 2013.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on September 13, 2013.

**John Duncan,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 17 October 2013*

Deadhorse, AK, Deadhorse, Takeoff Minimums and Obstacle DP, Amdt 3
Homer, AK, Homer, LOC/DME RWY 4, Amdt 10
Kaltag, AK, Kaltag, RNAV (GPS) RWY 3, Orig-B
Kiana, AK, Bob Baker Memorial, RNAV (GPS) RWY 6, Orig-A
Nome, AK, Nome, RNAV (GPS) RWY 10, Amdt 1
Nome, AK, Nome, RNAV (GPS) RWY 28, Amdt 1
Point Hope, AK, Point Hope, RNAV (GPS) RWY 1, Amdt 1
Point Hope, AK, Point Hope, RNAV (GPS) RWY 19, Amdt 1
Point Hope, AK, Point Hope, Takeoff Minimums and Obstacle DP, Amdt 1
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 19L, Amdt 20A
San Francisco, CA, San Francisco Intl, ILS OR LOC RWY 28L, ILS RWY 28L (SA CAT II), Amdt 24A
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 19L, Amdt 2A
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 10L, Amdt 23
Jacksonville, FL, Jacksonville Intl, RNAV (RNP) Y RWY 8, Orig-A
Jacksonville, FL, Jacksonville Intl, RNAV (RNP) Y RWY 14, Orig-A
Jacksonville, FL, Jacksonville Intl, RNAV (RNP) Y RWY 32, Amdt 1
Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 8, Amdt 1
Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 17, Amdt 1

Ormond Beach, FL, Ormond Beach Muni, RNAV (GPS) RWY 26, Amdt 1
Panama City, FL, Northwest Florida Beaches Intl, RNAV (GPS) RWY 34, Amdt 2A
St Petersburg-Clearwater, FL, St Petersburg-Clearwater Intl, VOR/DME–B, Orig
Valdosta, GA, Valdosta Rgnl, RNAV (GPS) RWY 4, Amdt 1
Valdosta, GA, Valdosta Rgnl, RNAV (GPS) RWY 17, Amdt 2
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 10C, ILS RWY 10C (SA CAT I), ILS RWY 10C (CAT II), ILS RWY 10C (CAT III), Orig
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 28C, ILS RWY 28C (SA CAT I), ILS RWY 28C (CAT II), ILS RWY 28C (CAT III), Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 10C, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 28C, Orig
Peoria, IL, Mount Hawley Auxiliary, RNAV (GPS) RWY 18, Amdt 1
Kendallville, IN, Kendallville Muni, VOR/DME–A, Orig-A, CANCELED
Cumberland, MD, Greater Cumberland Rgnl, RNAV (GPS) RWY 5, Amdt 1A
Hagerstown, MD, Hagerstown Rgnl-Richard A Henson Fld, RNAV (GPS) RWY 9, Amdt 1
Hagerstown, MD, Hagerstown Rgnl-Richard A Henson Fld, Takeoff Minimums and Obstacle DP, Amdt 6
Lapeer, MI, Dupont-Lapeer, RNAV (GPS) RWY 18, Orig
Lapeer, MI, Dupont-Lapeer, RNAV (GPS) RWY 36, Orig
Elbow Lake, MN, Elbow Lake Muni—Pride of the Prairie, RNAV (GPS) RWY 14, Orig
Elbow Lake, MN, Elbow Lake Muni—Pride of the Prairie, RNAV (GPS) RWY 32, Orig
Elbow Lake, MN, Elbow Lake Muni—Pride of the Prairie, Takeoff Minimums and Obstacle DP, Orig
Marks, MS, Selfs, RNAV (GPS) RWY 2, Amdt 1
Marks, MS, Selfs, RNAV (GPS) RWY 20, Amdt 1
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, ILS OR LOC/DME RWY 4, Amdt 17
Binghamton, NY, Greater Binghamton/Edwin A Link Field, ILS OR LOC RWY 34, Amdt 4
New York, NY, La Guardia, ILS OR LOC RWY 4, Amdt 36
Poughkeepsie, NY, Dutchess County, Takeoff Minimums and Obstacle DP, Amdt 2
Mc Alester, OK, Mc Alester Regional, VOR–A, Amdt 13A, CANCELED
Weatherford, OK, Thomas P Stafford, RNAV (GPS) RWY 35, Amdt 1A
Mount Pocono, PA, Pocono Mountains Muni, VOR/DME RWY 13, Amdt 8
Pittsburgh, PA, Pittsburgh Intl, ILS OR LOC RWY 32, Amdt 13A
Sterling, PA, Spring Hill, RNAV (GPS)-A, Amdt 1
Sterling, PA, Spring Hill, VOR–B, Orig, CANCELED
Sterling, PA, Spring Hill, VOR/DME–B, Orig
Wilkes-Barre, PA, Wilkes-Barre Wyoming Valley, RNAV (GPS) RWY 25, Orig-A
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS OR LOC/DME RWY 4, Amdt 37
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS OR LOC/DME RWY 22, Amdt 8
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, RNAV (GPS) RWY 4, Amdt 1
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, RNAV (GPS) RWY 22, Amdt 1
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, RNAV (GPS) RWY 26, Amdt 1
Cheraw, SC, Cheraw Muni/Lynch Bellinger Field, VOR/DME RWY 8, Amdt 3
Walterboro, SC, Lowcountry Rgnl, ILS OR LOC/DME RWY 23, Amdt 1A
Knoxville, TN, Knoxville Downtown Island, RNAV (GPS) RWY 26, Orig-A
Brookneal, VA, Brookneal/Campbell County, Takeoff Minimums and Obstacle DP, Amdt 1
Brookneal, VA, Brookneal/Campbell County, VOR/DME–A, Amdt 2
Norfolk, VA, Norfolk Intl, RNAV (GPS) RWY 32, Orig-C
Bennington, VT, William H. Morse State, RNAV (GPS) RWY 13, Orig-C

** * * Effective 14 November 2013*

Washington, DC, Washington Dulles Intl, VOR/DME RWY 12, Amdt 9A
New Orleans, LA, Louis Armstrong New Orleans Intl, RADAR–1, Amdt 17A, CANCELED

[FR Doc. 2013–23494 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30921; Amdt. No. 3556]**

### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective September 30, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 2013.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

*Availability*—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a),

1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

## The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR part 97:**

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on September 13, 2013.

**John Duncan,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 10/17/13 | AK | Koyuk | Koyuk Alfred Adams | 2/3762 | 9/5/13 | NDB RWY 1, Amdt 1A |
| 10/17/13 | AK | Koyuk | Koyuk Alfred Adams | 2/3763 | 9/5/13 | NDB/DME RWY 1, Amdt 1A |
| 10/17/13 | OR | Sunriver | Sunriver | 3/0191 | 9/10/13 | RNAV (GPS) RWY 18, Orig-A |
| 10/17/13 | OR | Sunriver | Sunriver | 3/0192 | 9/10/13 | VOR/DME RWY 18, Amdt 1 |
| 10/17/13 | FL | Fort Lauderdale | Fort Lauderdale/Hollywood Intl. | 3/0422 | 9/5/13 | RNAV (GPS) Y RWY 28R, Amdt 3A |
| 10/17/13 | GA | Alma | Bacon County | 3/0528 | 9/10/13 | RNAV (GPS) RWY 33, Orig |
| 10/17/13 | GA | Alma | Bacon County | 3/0529 | 9/10/13 | RNAV (GPS) RWY 15, Amdt 1 |
| 10/17/13 | OH | Hamilton | Butler CO Rgnl | 3/1006 | 8/29/13 | ILS OR LOC RWY 29, Amdt 1A |
| 10/17/13 | CA | Half Moon Bay | Half Moon Bay | 3/1036 | 8/29/13 | Takeoff Minimums and (Obstacle) DP, Orig |
| 10/17/13 | CT | Meriden | Meriden Markham Muni | 3/2626 | 9/5/13 | RNAV (GPS) RWY 36, Orig-A |
| 10/17/13 | CT | Meriden | Meriden Markham Muni | 3/2627 | 9/5/13 | VOR RWY 36, Amdt 4A |
| 10/17/13 | WA | Bellingham | Bellingham Intl | 3/2757 | 9/10/13 | ILS OR LOC RWY 16, ILS RWY 16 (SA CAT I), Amdt 7 |
| 10/17/13 | AK | Savoonga | Savoonga | 3/3472 | 8/29/13 | VOR/DME RWY 23, Amdt 1A |
| 10/17/13 | AK | Savoonga | Savoonga | 3/3474 | 8/29/13 | RNAV (GPS) RWY 23, Amdt 1A |
| 10/17/13 | AK | Savoonga | Savoonga | 3/3476 | 8/29/13 | VOR RWY 23, Amdt 1A |
| 10/17/13 | AK | Savoonga | Savoonga | 3/3482 | 8/29/13 | RNAV (GPS) RWY 5, Amdt 1 |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/3993 | 9/10/13 | RNAV (GPS) RWY 36R, Amdt 1 |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/3994 | 9/10/13 | VOR/DME RWY 8, Amdt 4 |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/3996 | 9/10/13 | ILS OR LOC RWY 18L, Amdt 15B |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/3999 | 9/10/13 | RNAV (GPS) RWY 18L, Amdt 1A |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/4000 | 9/10/13 | ILS OR LOC RWY 18R, Amdt 7B |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/4001 | 9/10/13 | RNAV (GPS) Y RWY 26, Amdt 3A |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/4002 | 9/10/13 | VOR OR TACAN RWY 26, Amdt 24A |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/4003 | 9/10/13 | RNAV (GPS) RWY 36L, Orig-B |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/4005 | 9/10/13 | ILS OR LOC RWY 36R, Amdt 29B |
| 10/17/13 | OK | Tulsa | Tulsa Intl | 3/4010 | 9/10/13 | RNAV (GPS) Y RWY 18R, Amdt 1B |
| 10/17/13 | MI | Escanaba | Delta County | 3/4011 | 9/10/13 | RNAV (GPS) RWY 9, Orig |
| 10/17/13 | MI | Escanaba | Delta County | 3/4012 | 9/10/13 | LOC/DME BC RWY 27, Amdt 1 |
| 10/17/13 | MI | Escanaba | Delta County | 3/4013 | 9/10/13 | VOR RWY 9, Amdt 14 |
| 10/17/13 | MI | Escanaba | Delta County | 3/4014 | 9/10/13 | VOR RWY 36, Orig-A |
| 10/17/13 | MI | Escanaba | Delta County | 3/4015 | 9/10/13 | VOR RWY 27, Amdt 12 |
| 10/17/13 | MI | Escanaba | Delta County | 3/4024 | 9/10/13 | ILS OR LOC RWY 9, Amdt 2A |
| 10/17/13 | MI | Escanaba | Delta County | 3/4031 | 9/10/13 | RNAV (GPS) RWY 27, Amdt 1 |
| 10/17/13 | OK | Stillwater | Stillwater Rgnl | 3/4057 | 9/10/13 | RNAV (GPS) RWY 17, Orig |
| 10/17/13 | OK | Stillwater | Stillwater Rgnl | 3/4061 | 9/10/13 | VOR/DME RWY 35, Amdt 1 |
| 10/17/13 | OK | Stillwater | Stillwater Rgnl | 3/4062 | 9/10/13 | NDB RWY 17, Amdt 1 |
| 10/17/13 | OK | Stillwater | Stillwater Rgnl | 3/4075 | 9/10/13 | ILS OR LOC RWY 17, Amdt 2A |
| 10/17/13 | OK | Stillwater | Stillwater Rgnl | 3/4076 | 9/10/13 | VOR RWY 17, Amdt 14 |
| 10/17/13 | MO | Joplin | Joplin Rgnl | 3/4170 | 9/10/13 | ILS OR LOC/DME RWY 18, Amdt 2 |
| 10/17/13 | MO | Joplin | Joplin Rgnl | 3/4173 | 9/10/13 | RNAV (GPS) RWY 36, Orig |
| 10/17/13 | MO | Joplin | Joplin Rgnl | 3/4181 | 9/10/13 | LOC BC RWY 31, Amdt 21A |
| 10/17/13 | MO | Joplin | Joplin Rgnl | 3/4189 | 9/10/13 | RNAV (GPS) RWY 13, Orig |
| 10/17/13 | MO | Joplin | Joplin Rgnl | 3/4191 | 9/10/13 | ILS OR LOC/NDB RWY 13, Orig |
| 10/17/13 | IN | Frankfort | Frankfort Muni | 3/4259 | 9/5/13 | NDB RWY 9, Amdt 3 |
| 10/17/13 | OR | Corvallis | Corvallis Muni | 3/4265 | 8/29/13 | NDB RWY 17, Amdt 2 |
| 10/17/13 | TX | Perryton | Perryton Ochiltree County | 3/4294 | 9/5/13 | NDB A, Amdt 4 |
| 10/17/13 | UT | Salt Lake City | Salt Lake City Intl | 3/4342 | 8/29/13 | ILS OR LOC RWY 16R, ILS RWY 16R (SA CAT I), ILS RWY 16R (CAT II & III), Amdt 3A |
| 10/17/13 | CA | Fresno | Fresno Yosemite Intl | 3/4531 | 8/29/13 | LOC RWY 11L, Amdt 2 |
| 10/17/13 | WA | Pasco | Tri-Cities | 3/4547 | 8/29/13 | RNAV (RNP) Z RWY 21R, Orig |
| 10/17/13 | WA | Bellingham | Bellingham Intl | 3/4550 | 9/10/13 | RNAV (GPS) Y RWY 16, Amdt 2 |
| 10/17/13 | WA | Bellingham | Bellingham Intl | 3/4558 | 9/10/13 | RNAV (GPS) Y RWY 34, Amdt 1 |
| 10/17/13 | TN | Humboldt | Humboldt Muni | 3/4697 | 9/5/13 | VOR/DME–A, Amdt 5 |
| 10/17/13 | AK | Kaltag | Kaltag | 3/4804 | 8/29/13 | RNAV (GPS) RWY 21, Amdt 1 |
| 10/17/13 | MO | Sedalia | Sedalia Rgnl | 3/4881 | 8/29/13 | NDB RWY 18, Amdt 8 |
| 10/17/13 | MO | Sedalia | Sedalia Rgnl | 3/4882 | 8/29/13 | NDB RWY 36, Amdt 9 |
| 10/17/13 | NJ | Teterboro | Teterboro | 3/4893 | 8/29/13 | RNAV (GPS) Y RWY 6, Amdt 2A |
| 10/17/13 | AK | Deadhorse | Deadhorse | 3/4995 | 9/5/13 | ILS OR LOC/DME RWY 5, Amdt 2C |
| 10/17/13 | AR | Dumas | Billy Free Muni | 3/5037 | 9/10/13 | VOR/DME RWY 36, Amdt 3 |
| 10/17/13 | NM | Carlsbad | Cavern City Air Trml | 3/5039 | 9/5/13 | ILS RWY 3, Amdt 4B |
| 10/17/13 | NM | Carlsbad | Cavern City Air Trml | 3/5040 | 9/5/13 | VOR RWY 32L, Amdt 6 |
| 10/17/13 | MS | Jackson | Jackson-Evers Intl | 3/5201 | 9/10/13 | ILS OR LOC RWY 34L, Amdt 6 |
| 10/17/13 | CO | Holyoke | Holyoke | 3/5265 | 8/29/13 | RNAV (GPS) RWY 14, Orig-B |
| 10/17/13 | CO | Holyoke | Holyoke | 3/5269 | 8/29/13 | RNAV (GPS) RWY 32, Orig-A |
| 10/17/13 | AK | Anaktuvuk Pass | Anaktuvuk Pass | 3/5282 | 8/29/13 | NDB B, Amdt 1 |
| 10/17/13 | AK | Anaktuvuk Pass | Anaktuvuk Pass | 3/5283 | 8/29/13 | RNAV (GPS) A, Amdt 1 |
| 10/17/13 | MS | Meridian | Key Field | 3/5382 | 9/10/13 | ILS OR LOC RWY 19, Amdt 1 |
| 10/17/13 | MS | Meridian | Key Field | 3/5396 | 9/10/13 | Takeoff Minimums and (Obstacle) DP, Amdt 5 |
| 10/17/13 | AK | Point Hope | Point Hope | 3/5413 | 8/29/13 | NDB RWY 1, Amdt 2 |
| 10/17/13 | AK | Point Hope | Point Hope | 3/5414 | 8/29/13 | NDB RWY 19, Amdt 2 |
| 10/17/13 | AK | Soldotna | Soldotna | 3/5520 | 9/5/13 | RNAV (GPS) RWY 7, Orig-A |
| 10/17/13 | AK | Soldotna | Soldotna | 3/5521 | 9/5/13 | VOR/DME A, Amdt 7C |
| 10/17/13 | AK | Soldotna | Soldotna | 3/5523 | 9/5/13 | NDB RWY 7, Amdt 2A |
| 10/17/13 | AK | Soldotna | Soldotna | 3/5525 | 9/5/13 | NDB RWY 25, Amdt 3 |
| 10/17/13 | AZ | Kingman | Kingman | 3/5782 | 8/29/13 | RNAV (GPS) RWY 3, Orig |
| 10/17/13 | AZ | Kingman | Kingman | 3/5783 | 8/29/13 | VOR/DME RWY 21, Amdt 7 |
| 10/17/13 | AZ | Kingman | Kingman | 3/5787 | 8/29/13 | RNAV (GPS) Y RWY 21, Orig |
| 10/17/13 | AZ | Kingman | Kingman | 3/5790 | 8/29/13 | RNAV (GPS) Z RWY 21, Orig-A |
| 10/17/13 | GA | Waynesboro | Burke County | 3/5868 | 9/5/13 | RNAV (GPS) RWY 8, Orig |
| 10/17/13 | GA | Waynesboro | Burke County | 3/5871 | 9/5/13 | RNAV (GPS) RWY 26, Orig |
| 10/17/13 | UT | Salt Lake City | Salt Lake City Intl | 3/6094 | 8/29/13 | LDA/DME RWY 35, Orig |
| 10/17/13 | MI | Port Huron | St Clair County Intl | 3/6260 | 8/29/13 | ILS OR LOC RWY 4, Amdt 3B |
| 10/17/13 | IA | Sioux City | Sioux Gateway/Col. Bud Day Field. | 3/6352 | 9/10/13 | ILS OR LOC RWY 31, Amdt 25A |
| 10/17/13 | IA | Sioux City | Sioux Gateway/Col. Bud Day Field. | 3/6353 | 9/10/13 | VOR OR TACAN RWY 31, Amdt 26B |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 10/17/13 | IA | Sioux City | Sioux Gateway/Col. Bud Day Field. | 3/6354 | 9/10/13 | VOR/DME OR TACAN RWY 13, Amdt 18A |
| 10/17/13 | IA | Sioux City | Sioux Gateway/Col. Bud Day Field. | 3/6355 | 9/10/13 | NDB RWY 31, Amdt 23C |
| 10/17/13 | IA | Sioux City | Sioux Gateway/Col. Bud Day Field. | 3/6356 | 9/10/13 | NDB RWY 13, Amdt 15E |
| 10/17/13 | IA | Sioux City | Sioux Gateway/Col. Bud Day Field. | 3/6357 | 9/10/13 | ILS OR LOC RWY 13, Amdt 2 |
| 10/17/13 | IA | Sioux City | Sioux Gateway/Col. Bud Day Field. | 3/6358 | 9/10/13 | NDB RWY 35, Orig-D |
| 10/17/13 | CA | Santa Rosa | Charles M. Schulz-Sonoma County. | 3/6496 | 9/5/13 | VOR/DME RWY 14, Amdt 2A |
| 10/17/13 | CA | Santa Rosa | Charles M. Schulz-Sonoma County. | 3/6498 | 9/5/13 | ILS OR LOC RWY 32, Amdt 18 |
| 10/17/13 | CA | Santa Rosa | Charles M. Schulz-Sonoma County. | 3/6500 | 9/5/13 | VOR RWY 32, Amdt 19 |
| 10/17/13 | OR | Ontario | Ontario Muni | 3/6541 | 9/5/13 | NDB RWY 32, Amdt 5 |
| 10/17/13 | OR | Ontario | Ontario Muni | 3/6542 | 9/5/13 | RNAV (GPS) RWY 14, Orig |
| 10/17/13 | OR | Ontario | Ontario Muni | 3/6547 | 9/5/13 | RNAV (GPS) RWY 32, Orig |
| 10/17/13 | CA | Lompoc | Lompoc | 3/6740 | 9/10/13 | VOR/DME A, Amdt 5 |
| 10/17/13 | CO | Montrose | Montrose Rgnl | 3/6741 | 9/5/13 | RNAV (GPS) RWY 13, Orig |
| 10/17/13 | CO | Montrose | Montrose Rgnl | 3/6744 | 9/5/13 | RNAV (GPS) Y RWY 17, Orig |
| 10/17/13 | CO | Montrose | Montrose Rgnl | 3/6745 | 9/5/13 | VOR/DME RWY 13, Amdt 9 |
| 10/17/13 | CO | Montrose | Montrose Rgnl | 3/6747 | 9/5/13 | RNAV (GPS) RWY 35, Orig |
| 10/17/13 | CO | Montrose | Montrose Rgnl | 3/6749 | 9/5/13 | ILS OR LOC/DME RWY 17, Amdt 2 |
| 10/17/13 | CO | Montrose | Montrose Rgnl | 3/6750 | 9/5/13 | RNAV (GPS) Z RWY 17, Orig |
| 10/17/13 | WI | Fond Du Lac | Fond Du Lac County | 3/6783 | 8/29/13 | Takeoff Minimums and (Obstacle) DP, Amdt 1A |
| 10/17/13 | KS | Wichita | Beech Factory | 3/6894 | 9/10/13 | RNAV (GPS) RWY 19, Amdt 1 |
| 10/17/13 | KS | Wichita | Beech Factory | 3/6896 | 9/10/13 | RNAV (GPS) RWY 1, Amdt 1 |
| 10/17/13 | CA | Redding | Redding Muni | 3/7581 | 8/29/13 | Takeoff Minimums and (Obstacle) DP, Amdt 5 |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7948 | 9/10/13 | ILS RWY 17R (CAT II), Amdt 5B |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7952 | 9/10/13 | ILS RWY 17L (CAT II), Amdt 1B |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7956 | 9/10/13 | RNAV (GPS) RWY 17L, Orig-A |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7964 | 9/10/13 | RNAV (GPS) RWY 17R, Orig-A |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7976 | 9/10/13 | ILS OR LOC RWY 17L, Amdt 1B |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7978 | 9/10/13 | RNAV (GPS) RWY 18R, Orig-A |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7984 | 9/10/13 | RNAV (GPS) RWY 18L, Orig-A |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7986 | 9/10/13 | ILS OR LOC RWY 17R, Amdt 5B |
| 10/17/13 | FL | Orlando | Orlando Intl | 3/7992 | 9/10/13 | ILS OR LOC RWY 18R, Amdt 9B |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8836 | 9/10/13 | RNAV (GPS) RWY 2, Amdt 1 |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8841 | 9/10/13 | NDB RWY 20, Amdt 5 |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8842 | 9/10/13 | ILS OR LOC RWY 25, Amdt 1 |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8843 | 9/10/13 | RNAV (GPS) RWY 25, Amdt 2 |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8844 | 9/10/13 | ILS OR LOC RWY 7, Amdt 33 |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8845 | 9/10/13 | NDB RWY 2, Amdt 6 |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8848 | 9/10/13 | LOC/DME RWY 20, Amdt 1 |
| 10/17/13 | TX | Waco | Waco Rgnl | 3/8873 | 9/10/13 | VOR RWY 14, Amdt 23 |
| 10/17/13 | TX | Waco | Waco Rgnl | 3/8874 | 9/10/13 | ILS OR LOC RWY 19, Amdt 16 |
| 10/17/13 | TX | Waco | Waco Rgnl | 3/8875 | 9/10/13 | VOR/DME RWY 32, Amdt 15 |
| 10/17/13 | TX | Waco | Waco Rgnl | 3/8877 | 9/10/13 | RNAV (GPS) RWY 14, Orig |
| 10/17/13 | TX | Waco | Waco Rgnl | 3/8878 | 9/10/13 | RNAV (GPS) RWY 19, Orig |
| 10/17/13 | VA | Newport News | Newport News/Williamsburg Intl. | 3/8963 | 9/10/13 | RNAV (GPS) RWY 20, Amdt 2 |
| 10/17/13 | VA | Danville | Danville Rgnl | 3/9267 | 9/5/13 | RNAV (GPS) RWY 20, Orig |
| 10/17/13 | AK | Homer | Homer | 3/9439 | 8/29/13 | LOC/DME BC RWY 22, Amdt 5 |
| 10/17/13 | TX | Waco | Waco Rgnl | 3/9722 | 9/10/13 | RNAV (GPS) RWY 32, Orig-A |

[FR Doc. 2013–23486 Filed 9–27–13; 8:45 am]

BILLING CODE 4910–13–P

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**[Release No. 34–70468; File No. S7–19–10]**

**RIN 3235–AK69**

## Extension of Temporary Registration of Municipal Advisors

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; extension.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is amending interim final temporary Rule 15Ba2–6T, which provides for the temporary registration of municipal advisors under the Securities Exchange Act of 1934 (''Exchange Act''), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), to extend the date on which Rule 15Ba2–6T (and consequently Form MA–T) will sunset from September 30, 2013, to December 31, 2014. Under the amendment, all temporary registrations submitted pursuant to Rule 15Ba2–6T also will expire no later than December 31, 2014.

**DATES:** *Effective Date:* September 30, 2013. The expiration of the effective period of interim final temporary Rule 15Ba2–6T (17 CFR 240.15Ba2–6T) and Form MA–T (17 CFR 249.1300T) is delayed from September 30, 2013, to December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:** *Office of Municipal Securities:* John Cross, Director, at (202) 551–5839; Jessica Kane, Senior Special Counsel to the Director, at (202) 551–3235; Rebecca Olsen, Attorney Fellow, at (202) 551–5540; Mary Simpkins, Senior Special Counsel, at (202) 551–5683; at Office of Municipal Securities, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

*Office of Market Supervision:* Molly Kim, Senior Special Counsel, at (202) 551–5644; Yue Ding, Attorney-Adviser, at (202) 551–5842; at Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

**SUPPLEMENTARY INFORMATION:** The Commission is extending the expiration date for interim final temporary Rule 15Ba2–6T and Form MA–T under the Exchange Act.

### I. Discussion

Section 15B(a)(1) of the Exchange Act,[1] as amended by Section 975(a)(1)(B) of the Dodd-Frank Act,[2] makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission. Section 15B(a)(2) of the Exchange Act,[3] as amended by Section 975(a)(2) of the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

The registration requirement for municipal advisors became effective on October 1, 2010. On September 1, 2010, the Commission adopted interim final temporary Rule 15Ba2–6T under the Exchange Act,[4] which permits municipal advisors to temporarily satisfy the statutory registration requirement by completing Form MA–T[5] through the Commission's public Web site.[6] Rule 15Ba2–6T serves as a transitional step to the implementation of a permanent registration program, makes relevant information available to the public and municipal entities, and permits municipal advisors to continue their business after October 1, 2010.

Under Rule 15Ba2–6T, as initially adopted, all temporary registrations submitted pursuant to that rule would have expired on the earlier of: (1) The date that the municipal advisor's registration is approved or disapproved by the Commission pursuant to a final rule adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) on December 31, 2011. Also, as initially adopted, Rule 15Ba2–6T itself would have expired on December 31, 2011. On December 20, 2010, the Commission proposed for public comment rules for the permanent registration of municipal advisors.[7] On December 21, 2011, the Commission amended Rule 15Ba2–6T to extend the date on which that rule and Form MA–T would sunset from December 31, 2011, to September 30, 2012.[8] On September 21, 2012, the Commission further amended Rule 15Ba2–6T to extend the date on which that rule and Form MA–T would sunset from September 30, 2012, to September 30, 2013.[9] Accordingly, if the Commission does not take further action, all temporary registrations submitted pursuant to Rule 15Ba2–6T will expire no later than September 30, 2013. Further, existing Rule 15Ba2–6T will expire on September 30, 2013.

The Commission is also adopting the rules for the permanent registration of municipal advisors in a separate release.[10] As stated in the Adopting Release, rules and forms for the permanent registration of municipal advisors will become effective 60 days after publication of the final rules in the **Federal Register**.[11] Moreover, to ensure an orderly transition from the temporary registration regime to the permanent registration regime and submission of applications through EDGAR, the Commission in the Adopting Release provided staggered compliance dates for municipal advisors to complete their applications for registration under the

[1] 15 U.S.C. 78*o*–4(a)(1).

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 15 U.S.C. 78*o*–4(a)(2).

[4] 17 CFR 240.15Ba2–6T.

[5] 17 CFR 249.1300T.

[6] *See* Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) (''Interim Release''). The Commission received seven comment letters on the Interim Release. *See* letters from Brad R. Jacobsen, dated September 7, 2010; John J. Wagner, Kutak Rock LLP, dated September 28, 2010; Joy A. Howard, Principal, WM Financial Strategies, dated October 5, 2010; Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, dated October 8, 2010; Carolyn Walsh, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, Deputy General Counsel, ABA Securities Association, dated October 13, 2010; Amy Natterson Kroll and W. Hardy Callcott, Bingham McCutchen LLP, on behalf of the National Association of Energy Service Companies, dated October 13, 2010; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 15, 2010.

[7] *See* Securities Exchange Act Release No. 63576 (December 20, 2010), 76 FR 824 (January 6, 2011) (''Proposing Release'').

[8] *See* Securities Exchange Act Release No. 66020 (December 21, 2011), 76 FR 80733 (December 27, 2011) (''2011 Extension Release''). In the 2011 Extension Release, the Commission inadvertently omitted a reference to Subpart N and 17 CFR 249.1300T in the ''Statutory Authority and Text of Rule and Amendments'' section. As such, Subpart N, which consists of 17 CFR 249.1300T, was deleted from the Code of Federal Regulations. On July 12, 2012, the Commission adopted a technical amendment to restore Subpart N and 249.1300T to Title 17 of the Code of Federal Regulations. *See* Securities Exchange Act Release No. 66020A (July 12, 2012), 77 FR 42176 (July 18, 2012).

[9] *See* Securities Exchange Act Release No. 67901 (September 21, 2012), 77 FR 59061 (September 26, 2012) (''2012 Extension Release'' and, together with the 2011 Extension Release, ''Extension Releases'').

[10] *See* Securities Exchange Act Release No. 70462 (September 20, 2013) (''Adopting Release'').

[11] *See id.*, at Section V.

permanent registration regime.[12] These compliance dates are based on a municipal advisor's registration number under Rule 15Ba2–6T and Form MA–T (''temporary registration number'').[13] The first filing period will begin on July 1, 2014, and the last filing period will end on October 31, 2014.[14] A municipal advisor that enters into the municipal advisory business on or after October 1, 2014, and does not have a temporary registration number as of October 1, 2014, must file a complete application for registration under the permanent registration regime on or after October 1, 2014, and be registered with the Commission before engaging in municipal advisory activities.[15] In contrast, new municipal advisors who engage in municipal advisory activities before October 1, 2014, must continue to submit applications for temporary registration until September 30, 2014.

As explained in the Adopting Release, for a municipal advisory firm registered under the temporary registration regime that files a complete application for permanent registration during the applicable filing period, its temporary municipal advisor registration will continue to be in effect until the Commission grants or denies the application for permanent registration, unless the temporary registration is rescinded by the Commission or withdrawn by the municipal advisory firm.[16] For a municipal advisory firm registered under the temporary registration regime that does not timely file a complete application for permanent registration, the firm's temporary registration will expire forty-five days after the compliance date for permanent registration for the firm.[17]

Because municipal advisors would need to rely on their temporary registrations until they are registered under the permanent registration regime, the Commission has determined that it is necessary and appropriate to extend the expiration date of Rule 15Ba2–6T and Form MA–T to December 31, 2014.[18] The extension will provide an orderly method for municipal advisors to continue to temporarily satisfy the registration requirement under Section 15B of the Exchange Act until their permanent registrations are granted or denied by the Commission. The extension will also prevent a gap between the time at which the temporary rule, absent this extension, expires and at which municipal advisors must be registered with the Commission under the permanent registration regime.

Specifically, the Commission is amending Rule 15Ba2–6T(e) to provide that all temporary registrations submitted pursuant to Rule 15Ba2–6T will expire on the earlier of: (1) The date that the municipal advisor's permanent registration, submitted pursuant to the Exchange Act and the rules thereunder, is approved or disapproved by the Commission; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; (3) for a municipal advisor that has not applied for permanent registration with the Commission in accordance with the Exchange Act and the rules thereunder, forty-five days after the compliance date of such rules for the municipal advisor; or (4) on December 31, 2014. In addition, the Commission is amending Rule 15Ba2–6T(f) to provide that the interim final temporary rule will expire on December 31, 2014. Thus, absent further action by the Commission, Rule 15Ba2–6T and Form MA–T will expire on December 31, 2014, at 11:59 p.m. Eastern Time.

The Commission is adding new subsection (3) to Rule 15Ba2–6T(e), as indicated above, to coordinate the expiration date of the temporary registrations in light of the staggered compliance dates under the permanent registration regime and to clarify that the December 31, 2014 expiration date for Rule 15Ba2–6T is not meant to extend the date by which a municipal advisor must apply for registration under the permanent registration regime. Rule 15Ba2–6T(e)(3) also would help ensure an orderly transition from the temporary registration regime to the permanent registration regime.

As previously noted in the Extension Releases, the Commission has considered the seven comment letters received on the Interim Release and, given the limited nature of this extension and the upcoming compliance dates for the permanent registration regime, the Commission is not making any other changes to Rule 15Ba2–6T and Form MA–T.[19] Making other changes to the temporary registration regime is unnecessary in light of the Commission's adoption of the permanent registration regime. The Commission also notes that the comment letters received in response to the Interim Release were addressed in the Proposing Release and were considered for purposes of the proposed and final rules for the registration of municipal advisors.

The amendments to Rule 15Ba2–6T will be effective on September 30, 2013. The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[20] This requirement does not apply, however, if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[21] The Commission notes that extending the expiration date of the temporary municipal advisor registration regime will not affect the substantive provisions of Rule 15Ba2–6T and Form MA–T. The amendments will merely allow municipal advisors who timely apply for permanent registration to continue to comply with the statutory registration requirement and thus continue to operate as municipal advisors until their permanent registration is granted or denied by the Commission. Extending the expiration date of Rule 15Ba2–6T and Form MA–T also will prevent a regulatory gap from developing between the temporary and permanent registration regimes. The extension, consequently, is designed to be temporally limited in scope to accommodate the staggered compliance dates under the permanent registration regime. For these reasons, and the reasons discussed throughout this release, the Commission believes that there is good cause to extend the expiration date of Rule 15Ba2–6T and Form MA–T to December 31, 2014, and to find that notice and solicitation of comment on the extension is impracticable, unnecessary, or contrary to the public interest.[22]

[12] *See id.*

[13] *See id.*

[14] *See id.* For purposes of this release, the ''applicable filing period'' is the appropriate filing period for a specific municipal advisor.

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] The Commission notes that it is amending Rule 15Ba2–6T only to extend the expiration date of that rule and, consequently, the expiration date of Form MA–T in order to coordinate the expiration of the temporary registration regime with the compliance dates under the permanent registration regime.

[19] *See* 2011 Extension Release, *supra* note 8, at 80734; and 2012 Extension Release, *supra* note 9, at 59062–63.

[20] *See* 5 U.S.C. 553(b).

[21] *See* 5 U.S.C. 553(b)(3)(B).

[22] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirements of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are ''impracticable, unnecessary, or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines''). Because the Commission is not publishing the rule amendments in a notice of proposed rulemaking, no analysis is required under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(2) (for purposes of the

Continued

The APA also generally requires that an agency publish a substantive rule in the **Federal Register** not less than 30 days before its effective date.[23] However, this requirement does not apply if the agency finds good cause and publishes such cause with the rule.[24] As noted above, the Commission is also adopting the rules for the permanent registration of municipal advisors in a separate release.[25] This extension is being adopted to accommodate the staggered compliance dates for permanent registration established in the Adopting Release. For this reason, and the reasons discussed throughout this release, the Commission finds good cause not to delay the effective date of the extension.

In connection with the adoption of Rule 15Ba2–6T and Form MA–T, the Commission submitted to the Office of Management and Budget (''OMB'') a request for approval of the ''collection of information'' requirements contained in the temporary rule and form in accordance with the Paperwork Reduction Act of 1995.[26] OMB initially approved the collection of information on an emergency basis with an expiration date of March 31, 2011. The Commission subsequently submitted a request for extension of the approval, and OMB extended the approval to March 31, 2014.[27] The collection of information to which Rule 15Ba2–6T and Form MA–T relates is ''Rule 15Ba2–6T and Form MA–T—Temporary Registration of Municipal Advisors.'' The OMB control number for the collection of information is 3235–0659. Since the Commission is not amending Rule 15Ba2–6T or the disclosure requirements contained in Form MA–T other than to extend the expiration date for Rule 15Ba2–6T and Form MA–T, this amendment will not change the ''collection of information'' previously approved by the OMB.[28]

The Commission is sensitive to the costs and benefits of its rules. Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[29] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[30] Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[31]

As discussed above, the amendments to Rule 15Ba2–6T extend the expiration date of that rule and Form MA–T to December 31, 2014. The temporary registration regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendments are measured. In the Interim Release, the Commission considered and discussed the costs and benefits of Rule 15Ba2–6T and Form MA–T.[32] In the Interim Release, the Commission also considered the effects of Rule 15Ba2–6T and Form MA–T on efficiency, competition, and capital formation.[33] In addition, in the Adopting Release, the Commission discussed the costs and benefits of the temporary registration regime and the current state of the municipal advisor market.[34]

Since the Commission is not amending Rule 15Ba2–6T and Form MA–T other than to extend their expiration date, the Commission believes the discussion of the temporary registration regime in the Adopting Release applies and the Commission does not expect additional significant costs or effects on efficiency, competition, or capital formation to result from the extension. The Commission also continues to believe that Rule 15Ba2–6T and Form MA–T, as extended, will not result in a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission, however, recognizes that allowing municipal advisors to continue to comply with the statutory registration requirement until a permanent registration regime becomes effective and preventing a regulatory gap from developing between the temporary and permanent registration regimes are important. The Commission also notes that not extending the expiration date of Rule 15Ba2–6T and Form MA–T could result in significant costs and burdens on efficiency, competition, and capital formation for municipal advisors who will be unable to comply with the statutory registration requirement.

## II. Statutory Authority and Text of Rule and Amendments

Pursuant to the Exchange Act, and particularly Section 15B (15 U.S.C. 78*o*-4), the Commission is amending § 240.15Ba2–6T and restating § 249.1300T of Title 17 of the Code of Federal Regulations in the manner set forth below.

### List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Municipal advisors, Temporary registration requirements.

### Text of Rule and Amendments

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et. seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

■ 2. In § 240.15Ba2–6T, paragraphs (e) and (f) are revised to read as follows:

**§ 240.15Ba2–6T Temporary registration as a municipal advisor; required amendments; and withdrawal from temporary registration.**

* * * * *

(e) All temporary registrations submitted pursuant to this section will expire on the earlier of:

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Regulatory Flexibility Act, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking).

[23] *See* 5 U.S.C. 553(d).

[24] *See* 5 U.S.C. 553(d)(3).

[25] *See supra* note 10.

[26] 44 U.S.C. 3501 *et seq.*

[27] The Commission will submit a request for further extension of the OMB approval in light of this extension of the temporary registration regime.

[28] Consistent with the prior Extension Releases, the Commission recognizes that some new municipal advisors may register pursuant to Rule 15Ba2–6T during the extension period, and municipal advisors registered pursuant to Rule 15Ba2–6T may submit amendments and withdrawals during the extension period. *See* 2011 Extension Release, *supra* note 8, at 80735; and 2012 Extension Release, *supra* note 9, at 59063–64. Also, the Commission notes that the Adopting Release contains estimates of the reporting and recordkeeping burdens under the final municipal advisor registration rules and forms. *See* Adopting Release, *supra* note 10, at Section VII.

[29] *See* 15 U.S.C. 78c(f).

[30] *See* 15 U.S.C. 78w(a)(2).

[31] *See* 15 U.S.C. 78w(a)(2).

[32] *See* Interim Release, *supra* note 6, at 54474–75.

[33] *See id.,* at 54475.

[34] *See* Adopting Release, *supra* note 10, at Section VIII.C.

(1) The date that the municipal advisor's permanent registration, submitted pursuant to the Act and the rules thereunder, is approved or disapproved by the Commission;

(2) The date on which the municipal advisor's temporary registration is rescinded by the Commission;

(3) For a municipal advisor that has not applied for permanent registration with the Commission in accordance with the Act and the rules thereunder, forty-five days after the compliance date of such rules for the municipal advisor; or

(4) On December 31, 2014.

(f) This section will expire on December 31, 2014.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Subpart N, consisting of § 249.1300T, continues to read as follows:

### Subpart N—Forms for Registration of Municipal Advisors

**§ 249.1300T Form MA–T—For temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration.**

The form shall be used for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration pursuant to Section 15B of the Exchange Act, (15 U.S.C. 78*o*–4).

[**Note:** The text of Form MA–T does not, and the amendments will not, appear in the Code of Federal Regulations.]

Dated: September 23, 2013.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2013–23519 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 0

**[Docket No. USMS 110; AG Order]**

**RIN 1105–AB42**

### Revision to United States Marshals Service Fees for Services

**AGENCY:** United States Marshals Service, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the United States Marshals Service fees to reflect current costs to the United States Marshals Service for service of process in federal court proceedings. A proposed rule with invitation to comment was published in the **Federal Register** on April 12, 2013, at 78 FR 21862. Only one comment was received within the 60-day comment period and that comment supported adoption of the rule. Accordingly, the proposed rule is finalized without change.

**DATES:** Effective October 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joe Lazar, Associate General Counsel, United States Marshals Service, 2604 Jefferson Davis Highway, Alexandria, VA 22301, telephone number (202) 307–9054 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Legal Authority for the United States Marshals Service To Charge Fees

The Attorney General must establish fees to be taxed and collected for certain services rendered by the United States Marshals Service in connection with federal court proceedings 28 U.S.C. 1921(b). These services include, but are not limited to, serving writs, subpoenas, or summonses, preparing notices or bills of sale, keeping attached property, and certain necessary travel. 28 U.S.C. 1921(a). To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. 28 U.S.C. 1921(b).

The Attorney General initially established the fee schedule in 1991 based on the actual costs, e.g., salaries, overhead, etc., of the services rendered and the hours expended at that time. 56 FR 2436 (Jan. 23, 1991). Due to an increase in the salaries and benefits of United States Marshals Service personnel over time, the initial fee schedule was amended in 2000, see 65 FR 47859 (Aug. 4, 2000), and again in 2008, see 73 FR 69552 (Nov. 19, 2008). The current fee schedule is inadequate and no longer reflects the actual and reasonable costs of the services rendered.

#### Federal Cost Accounting and Fee Setting Standards and Guidelines Being Used

When developing fees for services, the United States Marshals Service adheres to the principles contained in Office of Management and Budget Circular No. A–25 Revised (''Circular No. A–25''). Circular No. A–25 states that, as a general policy, a ''user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' *Id.* § 6.

The United States Marshals Service follows the guidance contained in Circular No. A–25 to the extent that it is not inconsistent with any federal statute. When a statute ''prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited),'' the statute takes precedence over Circular No. A–25. *Id.* § 4(b). When a statute does not address issues of how to calculate fees or what costs to include in fee calculations, Circular No. A–25 instructs that its principles and guidance should be followed ''to the extent permitted by law.'' *Id.* According to Circular No. A–25, federal agencies generally should charge the full cost or the market price of providing services that provide a special benefit to identifiable recipients. *Id.* § 6. Circular No. A–25 defines full cost as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' These costs may include an ''appropriate share'' of: (a) ''[d]irect and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;'' (b) ''[p]hysical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;'' (c) ''management and supervisory costs;'' and (d) ''costs of enforcement, collection, research, establishment of standards, and regulation.'' *Id.* § 6(d)(1).

#### Processes Used To Determine the Amount of the Fee Revision

The Attorney General initially established the fee schedule in 1991 based on the average salaries, benefits, and overhead of the Deputy U.S. Marshals who executed process on behalf of a requesting party. The fee schedule was revised in 2000 and again in 2008. The 2008 rates, which are still being charged, are set forth at 28 CFR 0.114(a) as follows:

(1) For process forwarded for service from one U.S. Marshals Service office or suboffice to another—$8 per item forwarded;

(2) For process served by mail—$8 per item mailed;

(3) For process served or executed personally—$55 per hour (or portion thereof) for each item served by one U.S. Marshals Service employee, agent, or contractor, plus travel costs and any other out-of-pocket expenses. For each additional U.S. Marshals Service

employee, agent, or contractor who is needed to serve process—$55 per person per hour for each item served, plus travel costs and any other out-of-pocket expenses.

(4) For copies at the request of any party—$.10 per page;

(5) For preparing notice of sale, bill of sale, or U.S. Marshal deed—$20 per item;

(6) For keeping and advertisement of property attached—actual expenses incurred in seizing, maintaining, and disposing of the property.

In 2012, the United States Marshals Service conducted an analysis to determine whether, in light of the increase in salaries and expenses of its workforce over the previous time period, the existing fee schedule continued to reflect the costs of serving process. The following cost module was designed to reflect the average hourly cost of serving process in person on behalf of a requesting party.

COST MODULE

| | |
|---|---|
| Hourly Wage | 32.97 |
| Law Enforcement Availability Pay | 8.24 |
| Fringe Benefits | 16.90 |
| Indirect Costs | 7.41 |
| Total Personnel Costs | 65.52 |

The ''hourly wage'' in this module reflects the hourly basic rate for law enforcement officers at Grade 12, Step 1, as set forth in the Office of Personnel Management's 2012 Salary Table for the ''rest of the United States'' (available at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2012/law-enforcement-officer/rus_leo_h.pfd*). The cost of Law Enforcement Availability Pay also was factored into the hourly wage of an average Criminal Investigator (Deputy U.S. Marshal).[1] The fringe benefits rate reflected 41 percent of total wage costs. Finally, the indirect costs, which reflected the costs of administrative services, including management/supervisory compensation and benefits, depreciation, utilities, supplies, and equipment, constituted approximately 18 percent of the total wage and benefits costs. As a result of the cost module, the United States Marshals Service determined that the existing fee schedule no longer reflected the actual and reasonable costs of personally serving process.

The total personnel costs of serving process were rounded to the nearest five-dollar increment. Thus, in order to recover the actual and reasonable costs of serving process, the United States Marshals Service will charge $65 per hour (or portion thereof) for each item served by one United States Marshals Service law enforcement officer. This represents a less than 20 percent increase ($10 per hour) from the existing fee for serving process revised in 2008.

Only one comment was received on the proposed rule within the 60-day comment period and that comment supported adoption of the rule. Accordingly, the proposed rule is finalized without change.

**Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Under the current fee structure, the United States Marshals Service collected approximately $1,245,000 in service of process fees in FY 2012.[2] The implementation of this rule will provide the United States Marshals Service with an estimated additional $235,000 in revenue over the revenue that would be collected under the current fee structure. This revenue increase represents a recovery of costs based on an increase in salaries, expenses, and employee benefits over the previous four-year period.

The economic impact on individual entities that utilize the services of the United States Marshals Service will be minimal. The service of process fees only will affect entities that pursue litigation in Federal court and, in most instances, seek to have the U.S. Marshals levy upon or seize property. The service of process fees will be increased by only $10 per hour from the previous rate increase more than four years ago. The fees will be consonant with similar fees already paid by these entities in state court litigation.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or 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.

**Executive Orders 12866 and 13563—Regulatory Review**

This regulation has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866 (''Regulatory Planning and Review''), and with section 1(b) of Executive Order 13563 (''Improving Regulation and Regulatory Review'').

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both 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). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

**Executive Order 13132**

This 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice

[1] The Law Enforcement Availability Pay Act of 1994, Public Law 103–329, § 633, 108 Stat. 2425 (1994) (codified at 5 U.S.C. 5545a), provides that law enforcement officers, such as Criminal Investigators (Deputy U.S. Marshals), who are required to work unscheduled hours in excess of each regular work day, are entitled to a 25% premium pay in addition to their base salary.

[2] This amount does not include $986,000 in United States Marshals Service commissions collected for sales during FY 2012. This rule does not affect commissions, only the fees charged for service of process.

has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 12988**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 concerning civil justice reform.

**Paperwork Reduction Act of 1995**

This rule does not contain collection of information requirements and would not be subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501–20).

**List of Subjects in 28 CFR Part 0**

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

Accordingly, Title 28, Part 0, Subpart T of the Code of Federal Regulations is amended as follows:

## PART 0—[AMENDED]

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

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

**§ 0.114 [Amended]**

■ 2. In § 0.114, paragraph (a)(3) is amended by removing the fee ''$55'' and adding the fee ''$65'' in its place wherever it occurs.

Dated: September 23, 2013.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2013–23692 Filed 9–27–13; 8:45 am]

BILLING CODE 4410–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2013–0101]**

**RIN 1625–AA08**

## Special Local Regulation; Clearwater Super Boat National Championship Race, Gulf of Mexico; Clearwater, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation on the waters of the Gulf of Mexico in the vicinity of Clearwater, Florida during the Clearwater Super Boat National Championship Race. The race is scheduled to take place from 9:30 a.m. to 4 p.m. on September 29, 2013. Approximately 35 boats, ranging in length from 24 feet to 50 feet, traveling at speeds in excess of 100 miles per hour are expected to participate. Additionally, it is anticipated that 400 spectator vessels will be present along the race course. The special local regulation is necessary to protect the safety of race participants, participant vessels, spectators, and the general public on the navigable waters of the United States during the event. The special local regulation will temporarily restrict vessel traffic in the waters of the Gulf of Mexico in the vicinity of Clearwater, Florida. The special local regulation will establish the following three areas: A race area, where all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; a buffer area, where all persons and vessels, except those vessels enforcing the buffer area, are prohibited from entering, transiting through, anchoring in, or remaining within; and a spectator area, where all vessels must be anchored or operate at No Wake Speed.

**DATES:** This rule will be effective from 9:30 a.m. to 4:30 p.m. on September 29, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0101. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Marine Science Technician First Class Hector I. Fuentes, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Hector.I.Fuentes@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 with respect to this rule because due to the extended time required to address the associated safety concerns of high speed boat races and the need to de-conflict other marine events being held in the area. Additional time was required to coordinate the necessary safety parameters and interagency participation required to adequately patrol the event. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule may result in its failure to be in effect during the event in question and would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during this event.

For the same reason discussed above, 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**.

**B. Basis and Purpose**

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to provide for the safety of life on navigable waters of the United States during the Clearwater Super Boat National Championship Race.

**C. Discussion of Rule**

On September 29, 2013, Super Boat International Production, Inc. is sponsoring the Clearwater Super Boat National Championship Race, a series of high speed boat races. The races will be held on the waters of the Gulf of Mexico in Clearwater, Florida. Approximately 35 high speed power boats are anticipated to participate in the races. It is anticipated that approximately 400 spectator vessels will be present during the races.

The rule will establish a special local regulation that will encompass certain waters of the Gulf of Mexico in Clearwater, Florida. The special local regulations will be enforced from 9:30 a.m. until 4:30 p.m. on September 29, 2013. The special local regulations will establish the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within; (2) a buffer area, where all persons and vessels, except those vessels enforcing the buffer area, are prohibited from entering, transiting through, anchoring in, or remaining within; and (3) a spectator area, where all vessels must be anchored or operate at No Wake Speed.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

**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 or executive orders.

*1. Regulatory Planning and Review*

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only seven hours; (2) although persons and vessels are prohibited to enter, transit through, anchor in, or remain within the race area or buffer zone without authorization from the Captain of the Port St. Petersburg or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race area and buffer zone, or anchor in the spectator area, during the enforcement period if authorized by the Captain of the Port St. Petersburg or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

The Regulatory Flexibility Act (5 U.S.C. 601–612), 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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Gulf of Mexico in Clearwater, Florida, encompassed within the special local regulations from 9:30 a.m. until 4:30 p.m. on September 29, 2013. For the reasons discussed in the Regulatory Planning and Review section above, namely, the special local regulation is only in effect for seven hours and traffic may pass through the zone with the permission of the Captain of the Port or a designated representative, and is free to transit around the zone, this rule will 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** section.

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph (34)(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**E. List of Subjects in 33 CFR Part 100**

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

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

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0101 to read as follows:

**§ 100.35T07–0101 Special Local Regulations; Clearwater Super Boat National Championship Race, Gulf of Mexico; Clearwater, FL.**

(a) *Regulated Areas.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of the Gulf of Mexico contained within the following points: 27°58.96′ N, 82°50.05′ W, thence to position 27°58.60′ N, 82°50.04′ W, thence to position 27°58.64′ N, 82°50.14′ W, thence to position 28°00.43′ N, 82°50.02′ W, thence to position 28°00.45′ N, 82°50.13′ W, thence back to the start/finish position.

(2) *Buffer Area.* All waters of the Gulf of Mexico encompassed within the following points: 27′58.44′ N, 82°50.24′ W, thence to position 27°58.27′ N, 82°49.92′ W, thence to position 28°00.59′ N, 82°50.23′ W, thence to position 28°00.65′ N, 82°49.71′ W, thence back to position 27°58.44′ N, 82°50.24′ W.

(2) *Spectator Area.* All waters of Gulf of Mexico seaward of the following points: 27°58.60′ N, 82°50.23′ W, thence to position 28°00.47′ N, 82°50.24′ W. All vessels are to be anchored and/or operate at a No Wake Speed in the spectator area. On-scene designated representatives will direct spectator vessels to the spectator area.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the Race Area unless an authorized race participant.

(2) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the Buffer area, except for those vessels enforcing the buffer area or authorized race participants transiting to the race area.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port St. Petersburg by telephone at (727) 824–7524, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative.

(4) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule will be enforced from 9:30 a.m. until 4:30 p.m. on September 29, 2013.

Dated: September 13, 2013.

**G. D. Case,**

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

[FR Doc. 2013–23531 Filed 9–26–13; 11:15 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2013–0827]**

**RIN 1625–AA00**

## Safety Zone, Delaware River; Wilmington, DE

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone during the dredging of Cherry Island Range Deepwater Point Anchorage No. 6 in the Delaware River. Norfolk

Construction and the Dredge ESSEX have been contracted by the Army Corps of Engineers for maintenance dredging of a portion of the Delaware River. Submerged pipeline will be present in the northern half of Deepwater Anchorage No. 6 to facilitate the project.

This regulation is necessary to provide for the safety of life on the navigable waters of the Delaware River. This safety zone is intended to restrict vessel traffic movement to protect mariners from the hazards associated with the presence of the submerged pipeline in the anchorage.

**DATES:** This rule is effective as to persons with actual notice from 5 a.m. on September 10, 2013, until 11 p.m. on October 15, 2013. In compliance with 5 U.S.C. 552(a)(1), this rule is effective without actual notice from the date it is published in the **Federal Register**, September 30, 2013, until 11 p.m. on October 15, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0827]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Veronica Smith, Chief Waterways Management, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4851, email *veronica.l.smith@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 it is impracticable and contrary to the public interest. Immediate action is necessary to provide for the safety of life and property in the navigable water. Publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard until August 28, 2013. Vessels transiting or attempting to transit the northern half of Deepwater Point Anchorage No. 6 during pipe-laying or dredging operations may be at risk. Delaying this rule to wait for a notice and comment period to run would be contrary to the public interest as it would inhibit the Coast Guard's ability to protect the public from the hazards associated with pipe-laying and dredging operations.

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**. Any delay encountered in this regulation's effective date would be contrary to the public interest because immediate action is needed to provide for the safety of life and property from the hazards associated with pipe-laying operations.

## B. Basis and Purpose

The Army Corps of Engineers has hired Norfolk Dredging Company to conduct maintenance dredging in the Delaware River main channel. Norfolk Dredging Company will be placing submerged pipeline in the northern half of Deepwater Point Anchorage with the Dredge Essex to facilitate this project. This regulation is necessary because there will be pipe-laying and dredging operations conducted in the anchorage and navigable channel. The purpose of the rule is to protect mariners and spectators in the area from the potential hazards associated with pipe-laying and dredging operations. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

## C. Discussion of the Final Rule

To mitigate the risks associated with the pipe-laying and dredging operations, the Captain of the Port, Sector Delaware Bay will enforce a safety zone while submerged pipeline is present through the duration of the dredging operations in Cherry Island Range. The safety zone will encompass all waters of Deepwater Anchorage No. 6, Delaware River, Wilmington, DE from the northeast corner of the anchorage at position 39°42.675′ N, 075°29.872′ W to the northwest corner of Anchorage No. 6, next to the channel at position 39°42.842′ N, 075°30.386′ W, south along the eastern channel boundary to position 39°42.214′ N, 075°30.619′ W, east to position 39°42.223′ N, 075°30.287′ W, then north to the first position. The safety zone will be in effect for an estimated 36 day period from September 10, 2013, from 5:00 a.m. until October 15, 2013 at 11:00 p.m. unless cancelled earlier by the Captain of the Port. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her on-scene representative. The Captain of the Port, Sector Delaware Bay, or her on-scene representative may be contacted via VHF channel 16.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

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

Although this regulation will restrict vessel traffic from operating within the safety zone on the navigable waters of Deepwater Point Anchorage No. 6, Delaware River, Wilmington, DE, the effect of this regulation will not be significant due to the limited duration of the safety zone and the availability of other nearby anchorages. The safety zone will be enforced in an area and in a manner that does conflict with transiting commercial and recreational traffic. The Coast Guard does not anticipate any significant economic impact because the safety zone will only be enforced in the upper half of the anchorage for a limited period of time. Furthermore, during the enforcement period, vessels may request permission to transit through the safety zone; permission may be granted by the on-

scene Coast Guard vessel on a case-by-case basis.

*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 might be small entities: the owners or operators of vessels intending to operate, transit, or anchor in a portion of Deepwater Point Anchorage No. 6 from September 10, 2013 until October 15, 2013 unless cancelled earlier by the Captain of the Port.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through the safety zone. Before activation of the zone, we will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessel traffic from transiting through Deepwater Point Anchorage No. 6 in order to protect the safety of life and property on the waters while submerged dredge pipe-laying and dredging operations are conducted. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T05–0827, to read as follows:

### § 165.T05–0827 Safety Zone, Submerged Dredge Pipeline and Dredging, Deepwater Point Anchorage No. 6; Delaware River, Wilmington, DE.

(a) *Regulated Area.* The following area is a safety zone: The safety zone will encompass all waters of Deepwater Anchorage No. 6, Delaware River, Wilmington, DE from the northeast corner of the anchorage at position 39°42.675′ N, 075°29.872′ W to the northwest corner of Anchorage No. 6, next to the channel at position 39°42.842′N, 075°30.386′ W, south along the eastern channel boundary to position 39°42.214′ N, 075°30.619′ W, east to position 39°42.223′ N, 075°30.287′ W, then north to the first position.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this section § 165.T05–0827.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or her designated representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her designated representative aboard the on-scene Coast Guard vessel one hour prior to the intended time of transit.

(3) Vessels granted permission to transit through the Safety Zone must do so in accordance with the directions provided by the Captain of the Port or her designated representative to the vessel.

(4) To seek permission to transit this safety zone, the Captain of the Port or her designated representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940.

(5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation, and

(iii) Emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(9) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(c) *Definitions.*

(1) *Captain of the Port* means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

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

(e) *Enforcement period.* This section will be enforced for a 36 day period from September 10, 2013, at 5:00 a.m. until October 15, 2013 at 11:00 p.m. unless cancelled earlier by the Captain of the Port.

Dated: September 6, 2013.

**Benjamin A. Cooper,**

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

[FR Doc. 2013–22761 Filed 9–27–13; 8:45 am]

**BILLING CODE 9110–04–P**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1958

**[FDMS No. NARA–13–0004; Agency No. NARA–2013–045]**

**RIN 3095–AB81**

### Fees

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Direct final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is changing its records fees regulation to remove the payment policy section, which sets out methods of payment. This is being done to allow NARA more flexibility in the way it accepts payment.

**DATES:** This rule is effective October 30, 2013, without further action, unless adverse comment is received is received by October 21, 2013. If adverse comment is received, NARA will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments, identified by RIN 3095–AB81, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*
- *Email: regulation_comments@nara.gov*
- *Mail:* (For paper, disk, or CD–ROM submissions.) Regulations Comments Desk, Strategy Division (SP); Suite 4100; National and Archives Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001
- *Hand delivery or courier:* Deliver comments to 8601 Adelphi Road; College Park, MD.

*Instructions:* All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking (RIN 3095–AB81). All comments received may be published without changes, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For information or questions on this regulatory action, contact Kimberly Keravuori, by telephone at 301–837–3151, by email to *regulation_comments@nara.gov,* or by mail to Kimberly Keravuori, Regulations Program Manager; Strategy Division (SP), Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

**SUPPLEMENTARY INFORMATION:** NARA has facilities throughout the country that have different capacities for handling types of payment. In addition, new technology and reductions in funding cause changes to that capacity in different ways at different facilities. Due to the changing nature and complexity of this situation, it is not practical or helpful to keep a general statement of methods of payment in the regulation on fees. The proposed change also includes notice that the methods of payment information is available on NARA's Web site, along with the fee schedules. This change will affect all customers who do business with NARA.

This rule is effective upon publication for good cause as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). NARA believes that delaying the effective date for 30 days is unnecessary as this rule makes only minor changes to methods of payment.

This direct final rule is not a significant regulatory action for the purposes of E.O. 12866 and has been reviewed by the Office of Management and Budget (OMB). The proposed amendment is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities because it makes changes only to methods of payment for those using NARA services.

**List of Subjects in 36 CFR Part 1258**

Archives and records.

For the reasons stated in the preamble, NARA amends Title 36 of the Code of Federal Regulations, part 1258, as follows:

## PART 1258—FEES

■ 1. The authority citation for part 1258 continues to read as follows:

**Authority:** 44 U.S.C. 2116(c) and 2307.

**§ 1258.14 [Removed]**

■ 2. Remove § 1258.14.

**§ 1258.18 [Amended]**

■ 3. In § 1258.18(a), add two commas and the words '', methods of payment,'' after the words ''NARA's fee schedule.''

Dated: September 25, 2013.

**David S. Ferriero,**

*Archivist of the United States.*

[FR Doc. 2013–23904 Filed 9–27–13; 8:45 am]

BILLING CODE 7515–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2010–0954 and EPA–RO5–OAR–2010–0037; FRL9901–31–Region 5]**

## Approval and Promulgation of Air Quality Implementation Plans; States of Michigan and Minnesota; Regional Haze

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

**ACTION:** Final rule.

**SUMMARY:** In this notice of final rulemaking, EPA is disapproving in part the Michigan and Minnesota regional haze State Implementation Plans (SIPs) for failure to mandate best available retrofit technology (BART) for taconite facilities within these states. This final rule supplements a February 6, 2013, action that established Federal emission limits representing BART for these facilities.

**DATES:** This final rule is effective on October 30, 2013.

**ADDRESSES:** EPA has established dockets for this action under Docket ID Numbers EPA–R05–OAR–2010–0954 and EPA–RO5–OAR–2010–0037. All documents in the dockets 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 (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rosenthal.steven@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What are EPA's responses to the public comments it received?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

### I. What is the background for this action?

Minnesota submitted its regional haze SIP on December 30, 2009, a draft supplement on January 5, 2012, and a final supplemental submission on May 8, 2012. EPA proposed approval of the Minnesota regional haze SIP on January 25, 2012 (77 FR 3681). Among other actions, the proposed rule proposed to conditionally approve Minnesota's regional haze SIP as satisfying the BART requirements of the Clean Air Act (CAA or the ''Act'') section 169A(b)(2)(A) and 40 CFR 51.308(e) for the State's six taconite plants, provided that Minnesota submit emission limits representing BART prior to EPA's final action. During the comment period on EPA's proposed rule, EPA received comments providing evidence that better, cost-effective technology for the control of taconite plant emissions was available that Minnesota (and Michigan) failed to adequately consider in the SIP revision. Therefore, EPA published a final rule approving other aspects of the Minnesota regional haze SIP on June 12, 2012 (77 FR 34801), but deferred action on BART for Minnesota's taconite facilities.

Michigan submitted its regional haze SIP on November 5, 2010. EPA proposed action on the Michigan regional haze SIP on August 6, 2012 (77 FR 46912). In this action, EPA proposed to approve several aspects of Michigan's regional haze SIP, and proposed to disapprove Michigan's BART determinations for a Portland cement plant and a paper mill and proposed Federal limits for those two facilities. EPA published final action pursuant to this proposal on December 3, 2012 (77 FR 71533). However, similar to Minnesota, EPA deferred action on BART for the Tilden Mining taconite facility in Michigan.

On August 15, 2012 (77 FR 49308), EPA published a proposed partial disapproval and Federal Implementation Plan (FIP) for BART for taconite plants in Minnesota and Michigan. In that action, EPA reviewed relevant information regarding the technical feasibility of various options for the control of emissions from taconite plants and reviewed other information relevant to determining BART for these plants. On February 6, 2013 (78 FR 8706), EPA published a final rule establishing a FIP to implement BART for the taconite facilities in Minnesota and Michigan.

Also on February 6, 2013 (78 FR 8478), EPA supplemented its proposed partial disapproval of the Minnesota and Michigan SIPs for failure to require BART for taconite facilities within these states. EPA published this notice in response to comments that EPA had not adequately explained its rationale for proposing to disapprove the States' BART determinations for taconite in its August 15, 2012 proposed action.

### II. What are EPA's responses to the public comments it received?

In response to its supplemental proposed rulemaking, EPA received comments from ArcelorMittal Minorca Mine, Incorporated (ArcelorMittal), Cliffs Natural Resources, Inc. (Cliffs), U.S. Representative Richard M. Nolan, the Minnesota Pollution Control Agency

(MPCA), the National Mining Association (NMA), and the Michigan Department of Environmental Quality (MDEQ). The following discussion provides a summary of the comments and EPA's responses. The comments by ArcelorMittal are essentially identical to the comments from Cliffs, except that they do not refer to taconite-related issues in Michigan. Unless a comment by Cliffs is regarding taconite-related issues in Michigan, a comment ascribed to Cliffs is also from ArcelorMittal.

*A. Comments by Cliffs and/or ArcelorMittal*

*Comment:* The CAA gives primary authority for regional haze determinations to the states. States are responsible for developing and implementing the regional haze program. States are responsible for identifying BART-eligible sources, defining BART for each source, establishing reasonable progress goals, and developing long-term strategies to reduce regional haze in class I Federal areas.

The D.C. Circuit affirmed the primacy of states in implementing the regional haze program in *American Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002). There, the court confirmed the primacy of state authority in this area by invalidating EPA's regulations on the grounds that they impermissibly constrained state authority. EPA has only a limited role in evaluating regional haze SIPs because the CAA calls for states to play the lead role in implementing the regional haze program. EPA has conceded as much by acknowledging that states retain the primary responsibility of developing a viable visibility program and states must determine the appropriate level of BART control for each source subject to BART.

*Response:* Section 110 of the CAA requires states to develop SIPs with enforceable emission limitations and other control measures to meet the applicable requirements of the Act. A state must then submit its SIP to EPA for approval. Congress crafted the Act to provide for states to take the lead in developing SIPs, but balanced that decision by requiring EPA to review the SIPs to determine whether a given SIP meets all applicable requirements of the Act. *See* CAA sections 110(k)(3) and (l).

The D.C. Circuit's decision in *American Corn Growers* did not alter this balance. The court's decision there was limited to a holding that EPA could not require states to evaluate the first four BART factors on a source-specific basis, while requiring states to evaluate visibility improvement on a group-wide basis. In contrast, the Tenth Circuit recently affirmed EPA's authority to evaluate regional haze SIPs for compliance with all requirements of the Act, including the visibility protection provisions in section 169A and EPA's implementing regulations at 40 CFR 51.300–51.309 and 40 CFR pt. 51, app. Y. *See Oklahoma* v. *EPA,* _ F.3d _ (10th Cir. 2013). As discussed in our February 6, 2013, supplemental proposed disapproval, and in the response to comments in this final disapproval, EPA has determined that, while it agrees with Minnesota and Michigan's identification of BART-eligible sources, we find that the states did not satisfy the requirements for BART for the taconite facilities.

*Comment:* EPA rushed to issue a FIP, apparently leaving EPA without enough time to explain to the states how their SIPs were deficient. Only now, after finalizing its FIP, does EPA stop to ''take comments'' on the basis for its proposed disapproval of the SIPs, which is a sham that offers no real opportunity for commenters to influence the outcome of the regional haze process already determined by the FIP. EPA should stay the FIP until it properly considers public comments on its basis for disapproving the SIPs.

*Response:* In its comments dated September 28, 2012, addressing EPA's August 15, 2012, proposed action, Cliffs commented that ''EPA's Proposed Rule does not discuss the validity of the extensive factual information and technical analysis underlying Minnesota's and Michigan's BART determinations,'' and that ''EPA was forcing the public and the States to guess at what EPA believes was wrong with Minnesota's and Michigan's SIP submittals.'' In other words, Cliffs commented in September 2012 that EPA needed to provide a more extensive explanation of its basis for proposing to disapprove Minnesota and Michigan's BART determinations for taconite facilities, but now believes that the opportunity EPA has provided is rendered meaningless by the promulgation of EPA's FIP in February 2012.

We disagree. As explained in the final rule promulgating the FIP, EPA's FIP obligation following a finding of failure to submit remains in effect, irrespective of a subsequent state SIP submittal, unless and until EPA approves the SIP. *See* CAA section 110(c). A FIP is a gap-filling measure only, however. *See* CAA section 302(y). As a result, a FIP promulgated by EPA remains in place only until a state submits a SIP correcting the inadequacy and that SIP is approved by EPA. In this instance, Cliffs and other commenters had a meaningful opportunity to comment on EPA's supplemental proposed disapproval and explain why EPA's proposed action was incorrect. Had EPA agreed with Cliffs or other commenters and approved the Minnesota and Michigan BART determinations for taconite facilities instead, EPA's FIP would have been replaced. Therefore, Cliffs' assertions are incorrect. Nevertheless, we note that Cliffs' request for a stay is now moot because the Eighth Circuit has already granted such a stay.

*Comment:* EPA has a limited role in the regional haze process and therefore must defer to state determinations that meet minimum requirements. EPA's role in the regional haze program is limited to approving or disapproving SIPs submitted by the states, and EPA has limited discretion to disapprove a SIP, as outlined by CAA section 110(k).

The Minnesota SIP was deemed complete on June 30, 2010, and the Michigan SIP was deemed complete on May 5, 2011. Once a SIP is deemed complete, EPA has 12 months to act on it and ''shall approve such submittal as a whole if it meets the applicable requirements . . .'' EPA's role is limited to the ministerial function of reviewing SIPs for consistency with the Act's requirements.

*Response:* The commenters are correct with respect to the schedule in CAA section 110(k). However, nothing in this section states, or even implies, that EPA must automatically approve a SIP within 12 months after a SIP is deemed complete. Further, this section states that EPA shall only approve a SIP if it meets all of the applicable requirements of the Act. While Congress intended states to take the lead in developing regional haze SIPs, it balanced that decision by requiring EPA to review the states' SIPs to determine whether they meet the applicable requirements of the Act. EPA's review is not limited to the ministerial function of rubber-stamping a state's decisions. Rather, in reviewing regional haze SIPs in general and BART determinations in particular, EPA must consider not only whether the state considered the appropriate factors, but also whether the state acted reasonably in doing so. In undertaking such a review, EPA does not ''usurp'' the state's authority, but ensures that such authority is reasonably exercised.

*Comment:* Contrary to EPA's belief, the Ninth Circuit's decision in *Sierra Club* v. *EPA,* 671 F.3d 955 (9th Cir. 2012), does not authorize the Agency to disapprove a complete SIP every time new information becomes available. The Ninth Circuit's decision rests heavily on

CAA section 172(c)(3)'s requirement that nonattainment plans include a comprehensive, accurate, current inventory of actual emissions. No such provision exists in CAA section 169A, which governs regional haze. Rather, EPA is on record instructing states conducting BART determinations that ''technologies should be considered if available before the close of the State's public comment period'' and that they ''need not consider technologies that became available after this date.'' That is precisely what Minnesota and Michigan did, and EPA cannot use a decision from a different jurisdiction based on different statutory language to change course now that it prefers a different result. Rather, as the D.C. Circuit has held, ''[t]o require states to revise completed plans every time'' new information arises ''would lead to significant costs and potentially endless delays in the approval process.'' *Sierra Club* v. *EPA,* 356 F.3d 296, 08 (D.C. Cir. 2004).

*Response:* EPA disagrees about the scope of the Ninth Circuit's decision, which states that EPA should evaluate any new information available and ''may not simply ignore it without reasoned explanation or choice.'' *Sierra Club,* 671 F.3d at 967. The Ninth Circuit does not couch this statement narrowly in the context of EPA's review of nonattainment plan inventories, but rather presents it broadly as a principle of administrative law. Indeed, the Ninth Circuit's full holding states: ''But we should not silently rubber stamp agency action that is arbitrary and capricious in its reliance on old data without meaningful comment on the significance of more current compiled data. We hold that EPA's failure to even consider the new data and to provide an explanation for its choice rooted in the data presented was arbitrary and capricious.'' *Id.* at 968.

Irrespective of the significance of *Sierra Club* v. *EPA,* however, Cliffs mischaracterizes the technical feasibility provisions of the BART Guidelines. The statement there that a state need not consider technologies that are not commercially available by the end of the state's public comment period for its SIP bears no relation to the question of whether a technology that has been commercially available for decades, such as low $NO_X$ burners, is applicable to a specific source. Furthermore, even if Cliffs' incorrect reading of the BART Guidelines were correct, both Minnesota and Michigan were aware that low $NO_X$ burners had been successfully applied to taconite furnaces before the ends of their respective public comment periods. In a June 23, 2010, letter to Michigan regarding the state's draft regional haze SIP, EPA commented that ''a low $NO_X$ main burner firing solid fuels'' had been installed at Minntac and that ''work done by other companies had demonstrated that burner designs that lower flame temperature can reduce $NO_X$ formation in taconite furnaces.'' Similarly, in a February 10, 2012, letter to Minnesota responding to the state's draft regional haze SIP supplement for taconite facilities, EPA explained in detail that ''U.S. Steel has demonstrated the development and use of low $NO_X$ main burners that achieve 70 percent $NO_X$ reduction on its indurating lines.'' Therefore, both States were well aware that low $NO_X$ burners had been successfully applied to indurating furnaces. The states did not provide reasonable explanations for dismissing this information and instead continued to rely on the taconite facilities' cursory and unsupported determinations from 2006 that low $NO_X$ burners were technically infeasible.

*Comment:* Even if EPA legitimately determines that a SIP does not meet the minimum criteria for approval after giving states appropriate deference, EPA's actions remain proscribed by the Act. Section 110(c) permits EPA to issue a FIP ''unless the state corrects the deficiency'' EPA identified. Had EPA followed the procedure required by the Act and addressed the States' SIPs prior to issuing a FIP, any perceived issues could have been resolved.

*Response:* This comment addresses EPA's final rule promulgating the FIP and not EPA's supplemental proposed disapproval and is therefore not relevant to this rulemaking. Nevertheless, we point out that Cliffs fails to cite the full text of CAA section 110(c)(1), which states that EPA ''shall promulgate a [FIP] at any time within 2 years . . . unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such [FIP].'' Thus, the plain language of the Act requires SIP approval, not merely SIP submission, before EPA's FIP authority is tolled.

*Comment:* EPA can disapprove a SIP only where it fails to meet minimum CAA requirements. In the case of regional haze, the CAA required Minnesota and Michigan to weigh the five statutory factors and arrive at reasonable BART technology determinations.

Minnesota conducted a comprehensive rulemaking process to develop its regional haze program, beginning with its analysis of taconite sources in 2003. Minnesota began rulemaking efforts shortly after EPA promulgated its revised regulations in 2005 and invested ''thousands and thousands of hours'' over the next four years collecting and analyzing technical data, assessing ground-level operating information to make BART determinations that properly weighed the five statutory factors from its unique local perspective. After carefully reviewing all comments and analyzing all available information, on December 31, 2009, Minnesota submitted a detailed SIP to EPA that contained a determination of the technology that was BART for each taconite furnace in the state and for each regional haze pollutant. This SIP was supported by more than 1,000 pages of analysis.

Similarly, Michigan began working to meet its regional haze obligations soon after the finalization of EPA's revised regional haze regulations and its state guidelines for BART determinations. After reviewing all comments and analyzing all available information, on November 5, 2010, Michigan submitted a detailed SIP to EPA with extensive technical support totaling 1,187 pages that identified BART for taconite plants.

Those submittals demonstrate that both states met their statutory regional haze SIP burden, including for BART determinations. EPA must give the states' findings the very same deference that EPA so often claims it should receive when it holds the primary role in developing a substantive standard.

*Response:* EPA addressed these very general comments in our February 6, 2013 supplemental proposed disapproval and addresses these them further in our responses to the more specific comments that follow. The commenters fail to note that the states' (December 31, 2009 and November 5, 2010) SIPs that included thousands of pages lacked, among other things, actual $NO_X$ emission limits for taconite facilities. The States are not entitled to deference in this instance because of the numerous gaps and inadequacies in their SIPs, as described in the supplemental proposed disapproval and in the responses to comments that follow.

*Comment:* Minnesota and Michigan properly concluded that low $NO_X$ burners were not available or technically feasible for taconite furnaces at the close of the public comment periods. Pursuant to the BART Guidelines, Minnesota and Michigan identified low $NO_X$ burners as an available control technology at Step 1 of the BART analysis. ''Available'' at Step 1 means that the technology has a ''practical potential for application to the emissions unit.'' At Step 2 of the

BART analysis, the technologies in Step 1 are evaluated for technical feasibility. To be considered technically feasible, technology that has not been installed and operated on the source type in question must be both ''available'' and ''applicable.'' Availability under Step 2 is defined differently than it is under Step 1. Under Step 2, ''availability'' means commercial availability. A technology is only considered commercially available if it is past bench scale and pilot testing stages and has reached the licensing and commercial sale stages. ''Applicability'' is a technical determination that takes into account the technical difficulties that may prevent application of available technology to the source in question, such as size and space constraints, reliability, and operating problems. The ability to secure vendor guarantees is also relevant to the applicability determination.

EPA attempts to argue that the general existence of low $NO_X$ burner technology in other, dissimilar applications means they are technically feasible for the combustion zones of taconite furnaces under Step 2 of the BART analysis. On the contrary, the BART Guidelines identify the close of a state's public comment period as the cut-off point after which newly ''available'' technologies need not be considered by the states. The public comment period for Minnesota's BART technology determinations closed on May 16, 2008, and its supplemental comment period on other aspects of the proposed SIP ended September 3, 2009. Michigan's public comment period on its non-EGU BART technology determinations closed on June 23, 2010. Thus, based on Minnesota and Michigan's reasoned decisions to follow the BART Guidelines, only technologies that were ''available'' on May 16, 2008, and June 23, 2010 (respectively) could be considered.

EPA also implies that the States did not evaluate low $NO_X$ burners at all in their BART determinations when in fact both States did identify low $NO_X$ burners as ''available'' at Step 1 for every taconite facility. Minnesota and Michigan acknowledged that low $NO_X$ burners had been used in other applications such as boilers, but properly determined that low $NO_X$ burners were ''available'' under Step 2 only for the preheat sections of the furnaces. None of Cliffs' facilities operate preheat burners, so low $NO_X$ burners were not technically feasible for any of its indurating furnaces.

Furthermore, EPA's statement that Minnesota possessed information suggesting that low $NO_X$ burners were ''likely to be a successful technology'' for the main burners of taconite furnaces in 2009 is wholly without support. The record demonstrates that Minnesota and Michigan properly determined that low $NO_X$ burners were not ''available'' for the combustion zones of taconite furnaces by the end of the public comment periods. At the time Minnesota was developing its SIP, low $NO_X$ burners had never been installed in an application comparable to a taconite main burner. The Minntac studies EPA cites to in support of its claim of commercial availability only further support the States' positions. Minntac did not even begin pilot testing a new low $NO_X$ burner for its grate-kiln furnaces until May 2010. That leaves no doubt that low $NO_X$ burners in the combustion zone were unavailable at the time Minnesota was making BART technology determinations because its public comment period closed months before pilot testing even began. That testing began four months after the close of Michigan's public comment period and continued through 2011. Minntac's status reports from May and December 2011 further confirm that low $NO_X$ burners were still in the development stage through 2011. Further, Minntac identified a number of problems that required modifications to the initial burner and other adjustments. Despite all of these adjustments, Minntac never achieved the desired emission rates while combusting coal. The Essar low $NO_X$ burner studies for straight-grate furnaces were even further behind in the testing stages than the Minntac studies at the time of both SIP submissions. The ¼-scale test facility was not built until 2011 and final results were not submitted until August 2011.

Finally, the information on low $NO_X$ burners discussed above was available to EPA at the time it proposed approval of Minnesota's regional haze SIP in January 2012. EPA cannot now claim that it ''did not have the relevant information'' on low $NO_X$ burners until after it initially proposed approval of Minnesota's regional haze SIP.

*Response:* Due to the complexity of Cliffs' lengthy comment and the interconnectedness of its constituent arguments, it is being addressed by a single response. However, each of the four major points raised by Cliffs are specifically identified and addressed accordingly.

EPA agrees with Cliffs that a technology that is both ''available'' and ''applicable'' is technically feasible under Step 2 of the case-by-case BART analysis required under the BART Guidelines. Cliffs is also correct that the term ''available'' has somewhat different meanings under Step 1 and Step 2. Under Step 1, ''[a]vailable retrofit control options are those air pollution technologies with a practical potential for application to the emission unit and the regulated pollutant under evaluation.'' EPA interprets this use of the term ''available'' broadly to include all potential control options, even those that are cutting-edge or are not currently in use at the source type in question. Under Step 2, ''[a] control technique is considered available . . . if it has reached the stage of licensing and commercial availability.'' EPA's interpretation of this use of the term ''available'' is slightly less broad, and includes only those control options that can be obtained through ordinary commercial channels.

However, EPA strongly disagrees with Cliffs attempts to conflate the concept of ''availability'' under Step 2, with the separate concept of ''applicability.'' While it is true that control technologies that are not ''available'' through ordinary commercial channels by the end of a state's public comment period need not be considered as BART, the same is not true with regards to the question of ''applicability.'' In regards to this latter question, states ''need to exercise technical judgment in determining whether a control alternative is applicable to the source type under consideration.'' Moreover, ''a commercially available control option will be *presumed applicable* if it has been used on the same or a similar source type.''

In the instant context, low $NO_X$ burners are an ''available'' control technology under Step 2 because they can be obtained through ordinary commercial channels. Indeed, Fives North American and other low $NO_X$ burner manufacturers would presumably dispute the notion that their products, which have been on the market for decades, are not commercially available as Cliffs contends. As a result, Minnesota and Michigan were required to exercise their technical judgment as to whether low $NO_X$ burners were ''applicable'' to taconite furnaces. In light of the successful installation of low $NO_X$ burners at Minntac and Essar, which both states were aware of prior to the ends of their respective public comment periods, Minnesota and Michigan were further required to presume the applicability of low $NO_X$ burners for taconite furnaces because they were in use not just at a similar source type, but at the same source type. Since neither Minnesota nor Michigan adequately rebutted this presumption or responded

to comments, but instead relied primarily on cursory technical feasibility analyses performed by the taconite companies and their contractors in 2006, the states did not comply with the BART Guidelines or reasonably ''take into consideration the technology available'' or determine the ''best system of continuous emission reduction.'' *See* 40 CFR 51.301 and 51.308(e)(1)(ii)(A).

Contrary to the commenters' assertions, both states were aware that low $NO_X$ burners had been successfully installed on two lines at U.S. Steel's Minntac facility prior to the end of their respective periods for public comment.[1] In a June 23, 2010, letter to the Michigan Department of Natural Resources and Environment (now the MDEQ) regarding the state's draft regional haze SIP, EPA commented that ''a low-$NO_X$ main burner firing solid fuels'' had been installed at Minntac and that ''work done by other companies had demonstrated that burner designs that lower flame temperature can reduce $NO_X$ formation in taconite furnaces.'' [2] Similarly, in a February 10, 2012, letter to the Minnesota Pollution Control Agency responding to the state's draft regional haze SIP supplement for taconite facilities, EPA explained in detail that ''U.S. Steel has demonstrated the development and use of low $NO_X$ main burners that achieve 70 percent $NO_X$ reduction on its indurating lines.'' [3] In addition to these comments, both states received comments regarding the technical feasibility of low $NO_X$ burners from the Forest Service as well. Therefore, both Michigan and Minnesota were aware that low $NO_X$ burners had been successfully applied to indurating furnaces, and the commenters' arguments that the results of these studies somehow constitute ''new'' information are without merit.

Finally, even if information regarding the technical feasibility of installing low $NO_X$ burners to indurating furnaces was not available to Minnesota or Michigan, EPA nonetheless had a duty to consider any new information that subsequently arose when reviewing the states' SIPs. The Ninth Circuit recently held that ''if new information indicates to EPA that an existing SIP or SIP awaiting approval is inaccurate or not current, then, viewing air quality and scope of emissions with public interest in mind, EPA should properly evaluate the new information and may not simply ignore it without reasoned explanation of its choice.'' *Sierra Club* v. *EPA,* 671 F.3d 955, 967 (9th Cir. 2012). Thus, EPA is required, at a minimum, to take new information into account during the SIP approval process and, if necessary, alter its final decision accordingly.

EPA also disagrees with the commenters' assertions that low $NO_X$ burners are only commercially available for the preheat sections of indurating furnaces. The commenters statement that ''Minnesota and Michigan acknowledged that low $NO_X$ burners had been used in other applications such as boilers, but properly determined that low $NO_X$ burner technology was 'available' only in the preheat sections of the furnaces'' again confuses the concepts of availability and applicability. A control technology cannot be commercially available for one application, such as the preheat sections of the indurating furnaces, but not commercially available for another. Rather, the question is whether the commercially available control technology can be *applied* to the different situations.

In regards to the installations at Minntac and Essar, a January 30, 2009, report prepared by Hatch for U.S. Steel strongly recommended that U.S. Steel pursue all available technology and potential options pertaining to reducing the amount of $NO_X$ emissions generated by the rotary kiln at the Minntac facility, including the use of a low $NO_X$ burner. The feasibility of low $NO_X$ burners on straight-grate kilns is documented in a September 19, 2011 summary of findings presented to the Minnesota Pollution Control Board by Fives North American Combustion, Inc. (Fives) for Essar. Also, reports on the success of U.S. Steel's efforts to use low $NO_X$ burners were submitted to Minnesota in 2010 and 2011, well before the close of the State's comment period on its supplemental regional haze SIP in February 2012. These reports, coupled with the comments both Minnesota and Michigan received regarding the applicability of low $NO_X$ burners to taconite facilities, put the States on notice that the cursory technical infeasibility determinations in their regional haze SIPs were not only inadequate, but inconsistent with a documented installation.

Finally, EPA acknowledges that it was aware that low $NO_X$ burners were being installed at U.S. Steel's Minntac facility in 2010, two years before EPA initially proposed conditional approval of Minnesota's BART determinations for taconite facilities. However, EPA only became aware of the U.S. Steel test reports from Minntac confirming the successful implementation of low $NO_X$ burners from comments received in response to the January 2012 proposed rulemaking. Moreover, commenters urged EPA to take a harder look at the technical feasibility of low $NO_X$ burners and the adequacy of Minnesota's BART determinations for taconite facilities. EPA considered the comments and performed additional analysis, which is exactly the purpose of the public notice and comment period. Agencies are not required to finalize proposed decisions in the face of public comments that present compelling evidence that an agency's proposed course of action was incorrect.

*Comment:* Minnesota and Michigan properly determined that Good Combustion Practices (GCP) are BART for taconite furnaces. After identifying all technically feasible control options, the states performed cost-effectiveness analyses for each furnace and determined that no other controls would result in cost-effective $NO_X$ reductions. GCP will ensure that furnaces are running at their most efficient capabilities to complete combustion while consuming as little fuel as possible, which will reduce fuel-based $NO_X$ emissions and minimize thermal $NO_X$ by producing only the heat needed to make quality pellets. The states performed a proper BART analysis, weighing the five statutory factors to arrive at this control option, and EPA has no grounds for questioning that judgment.

EPA cannot credibly attack the legitimacy and enforceability of GCP, as EPA itself already requires taconite furnaces to employ GCP as part of the Taconite MACT, which requires all sources to ''identify and implement a set of site-specific GCP for each type of indurating furnace'' that ''correspond to . . . standard operating procedures for maintaining the proper and efficient combustion within each indurating furnace.'' GCP includes maintaining minimum combustion temperatures and maximum CO concentrations in the furnace exhaust gases, and ensuring proper burner alignment and fuel-air distribution and mixing. GCP also requires routine inspections, preventative maintenance, and performance analyses. The requirement to employ and demonstrate compliance

[1] The comment period for Michigan's regional haze SIP closed on June 23, 2010. The comment period for the Minnesota's regional haze SIP supplement regarding BART at taconite facilities closed on February 3, 2012, but EPA was granted an extension to submit comments. EPA's comments were submitted on February 10, 2012, and were received and considered by MPCA.

[2] See Michigan Regional Haze plan: EPA Letter to Michigan Department of Environmental Quality Regarding BART, May 24, 2012 (Docket # EPA–R05–OAR–2010–0954–0008).

[3] See MN Haze plan, EPA 2–10–12 comments to MPCA in MN May 8,2012, Suppl. Regional Haze SIP submittal (Docket # EPA–R05–OAR–2010–0037–0028).

with GCP is a federally enforceable requirement that has been incorporated by reference into the Title V permits for each facility. The operation and maintenance plans containing these GCP requirements were submitted to the state for each facility to ensure that they satisfied the GCP requirements set forth by EPA.

All of Cliffs' facilities were required to employ GCP as part of their Taconite MACT compliance obligations by October 2006, and were necessarily employing GCP when they were later required by Administrative Order (AO) to conduct $NO_X$ testing to establish numeric $NO_X$ BART emission limits. There is no merit to EPA's contention, therefore, that sources failed to use GCP while testing under a ''worst-case'' scenario to establish $NO_X$ BART emission limits. BART limits apply at all times, and therefore it is important to establish a limit that sources can meet under all operating conditions. As such, the state AOs required extended testing to gather over 150 data points that reflected GCP under a full range of normal operating conditions. The GCP-based $NO_X$ limits act as further assurance that sources will continue to employ GCP to remain in compliance.

EPA may not make an about-face on its approval of GCP and the emission limits reflecting these controls when nothing has changed since its proposed approval. EPA has no basis for changing its position and claiming that the new federally enforceable practices and emission limits it had already found acceptable are no longer satisfactory. Contrary to EPA's claims, the amended state SIPs continue to require GCP along with process modifications, and continue to contain emission limits (or plans to develop emission limits) based on those controls.

Even if EPA could demonstrate that additional $NO_X$ reduction technologies were available during the states' assessment of BART for taconite furnaces, $NO_X$ BART demonstrations will not materially change because availability is just one of the criteria for a BART determination. Low $NO_X$ burner technologies also fail as BART because they will not produce any discernible visibility improvement.

*Response:* EPA does not agree that Minnesota and Michigan properly determined that GCP is BART for taconite furnaces and that it identified all technically feasible control options. In its one-size-fits-all approach to establishing BART, with an essentially identical analysis for each taconite facility, Minnesota dismissed low $NO_X$ burners in the indurating section of the furnace based on speculation that they would adversely affect pellet quality. However, not only was this position unsupported by corroborating data, but U.S. Steel has demonstrated the technical feasibility of low $NO_X$ burners and documented that they do not adversely affect pellet quality.

EPA also disagrees that GCP underwent a five factor analysis as required by the Act and the Regional Haze Rule. In appendix 9.3 of its 2009 BART Determinations, MPCA states: ''However, the MPCA believes that neither ArcelorMittal nor the MPCA has sufficient operating parameter data or emissions data to be able to assess whether current combustion practices constitute 'good' combustion practices. . . .'' MPCA basically established an undefined concept, with no specified emission reduction potential, as BART. Without identification of a specific and quantifiable control requirement, there is no basis for a five factor analysis. There is similar language for Minnesota's other taconite facilities. Michigan also identified an unspecified GCP, without a $NO_X$ emission limit, as BART. In addition, Minnesota's 2012 regional haze SIP supplement failed to provide any indication of what GCP is and what effect it has on emissions.

The commenters' support of GCP lacks merit for several reasons, especially because GCP is not defined by Minnesota or Michigan. Neither State's regional haze SIP contained an assessment of combustion practices, an analysis of operating parameters in relation to emissions, or a definition of operating practices that constitute GCP. Such an assessment would be needed to establish GCP, and the lack thereof further diminishes GCP as being a meaningful control measure for the taconite furnaces. In addition, GCP is not typically considered to be a $NO_X$ reduction technique. As a relevant example, the January 30, 2009, $NO_X$ Reduction Analysis performed by Hatch for U.S. Steel's Minntac facility fails to list GCP as a potential $NO_X$ reduction technology for an indurating furnace. As another example, the 2008 BACT analysis for JEA—Greenland Energy Center Units 1 and 2 also fails to list GCP as a potential $NO_X$ control. This analysis goes on to state that measures taken to minimize the formation of $NO_X$ during combustion *inhibit* complete combustion, which increases the emissions of carbon monoxide (CO). In other words, GCP, which seeks to promote complete combustion rather than inhibit it, would tend to *increase* $NO_X$ emissions. The ''September 2010 We Energies Biomass Energy Project Revised Control Technology Review for Carbon Monoxide Emissions for the Biomass-Fired Boiler'' also discusses the inverse relation between $NO_X$ emissions and CO emissions, indicating how improving combustion efficiency can increase $NO_X$ emissions. In conclusion, the basic principles of combustion do not vary according to the nature of the burner application and GCP is not an accepted approach to reduce $NO_X$ emissions.

The commenters state that GCP is already required under other Federal regulations, including the Taconite MACT rule. However, GCP for the MACT is not the same as GCP for $NO_X$. GCP for the MACT is to control products of incomplete combustion (PIC). To minimize PIC, the operating conditions targeted are generally the opposite of those that would be targeted for reducing $NO_X$. The Taconite MACT explains at 68 FR 61883: ''The basic method used in reducing $NO_X$ emissions is a reduction in combustion temperature, which is the opposite strategy needed for minimizing PIC (i.e. increasing combustion temperature).'' Therefore, the operation and maintenance plans referred to by the commenters to ensure that they satisfied the GCP requirements in the Taconite MACT would therefore specify conditions that would increase $NO_X$ emissions, not reduce them.

Finally, the commenters' statement that ''[l]ow $NO_X$ burner technologies also fail as BART because they will not produce any discernible visibility improvement'' is not germane to this rulemaking. Minnesota and Michigan's regional haze SIPs did not assess the visibility improvement associated with low $NO_X$ burners, or conduct a five factor analysis at all, because the States improperly rejected the technology as technically infeasible. To the extent that Cliffs is attempting to comment once again on EPA's visibility analysis for low $NO_X$ burners that was conducted as part of the FIP, that rulemaking has been finalized.

*Comment:* Michigan modeling adequately demonstrates that $SO_2$ emissions from Tilden do not cause visibility impairment. Michigan conducted source-specific modeling using CALPUFF to justify its conclusion that $SO_2$ emissions from Tilden Mining do not cause visibility impairment in Class I areas. When Cliffs' consultant conducted the proper CAMx modeling for Tilden, the results fully supported Michigan's conclusion that $SO_2$ emissions do not cause visibility impairment. On the 98th percentile most impacted day, the visibility improvement at Isle Royale, when isolating the sulfate impact, was just 0.14 deciviews. Cliffs' updated visibility

modeling fully supports Michigan's determination that $SO_2$ reductions at Tilden Line 1 will not create sufficient visibility improvement to justify the expense of controls.

*Response:* This comment is of limited relevance because the issue raised by this comment was not a basis for disapproval. However, Cliffs' own modeling shows a combined impact of 0.24 deciviews at Isle Royale, Voyageurs, and Boundary Waters. In the discussion of the modeling results, Cliffs' report provides visibility impact thresholds to provide context for these results. The report states that a 0.10 deciview difference was defined by other states, such as the northeastern states' MANE–VU Regional Planning Organization, as the degree of visibility improvement below which additional controls would not be justified. Under such a threshold, even the 0.14 deciview improvement Cliffs' modeled for Isle Royale (if proven to be accurate) would be sufficient to require cost-effective controls.

*Comment:* CEMS are not required by the CAA, EPA's regulations implementing the Regional Haze program, or the BART Guidelines. The states instead have flexibility to choose an appropriate compliance demonstration method as long as it is sufficient to show compliance or noncompliance, contains a reasonable averaging period consistent with established reference methods, and provides adequate recordkeeping and reporting for the agency to confirm the source's compliance status. Also, consistent with the monitoring flexibility authorized under the BART Guidelines, MPCA accepted CEMS data or a ''comparable method of emission estimation'' from each BART-affected source for purposes of establishing BART emission limits.

*Response:* This comment fails to acknowledge or address the primary concern identified in EPA's supplemental proposed disapproval, namely that absent a CEMS requirement, EPA did not find the emission limits in Minnesota's regional haze SIP to be enforceable. Even with a 30-day stack testing option in the SIP, EPA believes (as discussed in the supplemental proposed disapproval) that the results from this method could be challenged at any time as not representative. Minnesota's regional haze SIP lacked clarity as to the method to be used to determine compliance, while Michigan had no relevant emission limits whatsoever addressing BART requirements.

*Comment:* EPA does not require CEMS in many of its rules, implicitly acknowledging that CEMS are not necessary to demonstrate continuous compliance with emission limits. EPA has adopted parametric monitoring systems for other regulatory requirements that are designed to ensure compliance with health-based emission limits, including the Taconite MACT.

*Response:* EPA does acknowledge that not all regulations published in the Code of Federal Regulations require a CEMS. However, EPA stresses that SIPs are approvable only if the emission limits contained therein are enforceable, which requires some method(s) to demonstrate compliance. EPA continues to believe that Minnesota failed to require appropriate methods to demonstrate compliance, while Michigan's SIP contained no $NO_X$ BART limit at all. Minnesota's limits are expressed as 30-day rolling averages and CEMS are needed to determine compliance with a 30-day rolling average on a continuing basis, but Minnesota in many cases does not require CEMS to provide data for evaluating compliance. In the absence of CEMS, Minnesota requires ''stack testing . . . for 30 hourly data points.'' Even if the average of the 30 data points exceeds the emission limit, the data can be contested as not necessarily representative of the 720 hours that are in a 30-day average. Minnesota has not addressed whether 720 consecutive hours of stack testing is even practicable, though none of the data used to develop emission limits appears to have been collected in this manner.

*Comment:* Minnesota and Michigan were aware of numerous operating difficulties that have been experienced with CEMS usage at taconite furnaces. Unlike EPA, the states understood that installing CEMS on a taconite furnace is significantly more complex than installing CEMS on a boiler. United Taconite found it necessary to seek multiple approvals from MPCA to extend its CEMS certification deadline due to CEMS maintenance difficulties, and U.S. Steel's Minntac facility, which uses CEMS for $NO_X$ monitoring, experienced similar problems with its original CEMS installation for lines 6 and 7.

*Response:* Comments regarding the difficulties of operating CEMS are not germane to the question of whether the limits adopted by Minnesota can be properly enforced without them. In any case, the initial problems faced by U.S. Steel's Minntac facility were resolved shortly after they occurred and have not reoccurred since then. EPA continues to believe that Minnesota's SIP failed to require appropriate methods for assessing compliance with its taconite plant emission limits.

*Comment:* Minnesota and Michigan sensibly concluded that requiring CEMS would add an unnecessary additional cost to their BART determinations that was not warranted. This conclusion is further supported by updated cost analyses for CEMS at Cliffs' taconite furnaces, which indicate capital costs of $1 million to $1.4 million per furnace for CEMS installation, plus hundreds of thousands of dollars in additional operating costs for each emission unit.

*Response:* Again, this comment appears to be an untimely comment on EPA's FIP and is not germane to EPA's proposed finding that Minnesota did not provide suitable methods for enforcing its emission limits. Cliffs provides a table in attachment B to its comments that lists installed capital costs of CEMS. As one example, the installed capital cost for Hibbing Line 1 is listed at $1.2 million dollars. The table also lists additional costs associated with this line's CEMS, including: (1) Annual labor at $311,250 and (2) parts and equipment at $97,600 per year, estimating the net present value (NPV) of installed CEMS to be $4,430,922. EPA used the number of CEMS that Cliffs specified it would need for Hibbing Line 1, as well as some additional costs (like scaffolding and platforms for brand new installations), in its standard CEMS cost spreadsheet (available at: *http://cfpub.epa.gov/oarweb/mkb/contechnique.cfm?ControlID=26*). Under this spreadsheet, EPA was unable to come close to duplicating the costs claimed by Cliffs. EPA is confident that the installation of CEMS at Cliffs' facilities will be substantially less than $1.0 to $1.4 million dollars/furnace. Even under very extreme circumstances, costs for multiple CEMS would barely reach one-third of the costs claimed by Cliffs.

*Comment:* Minnesota made all pertinent aspects of the BART determinations enforceable through Administrative Orders (AOs). First, EPA questions Minnesota's decision to express the $SO_2$ limits as lbs $SO_2$/long ton of pellets produced for Northshore and Hibbing, claiming that ''pellet production is not routinely measured'' and that the AOs do not require recordkeeping of pellet production. However, pellet production must be routinely measured for business purposes, as finished pellets make up the entire sales business of each plant. Production tonnage is measured and cross-checked by a series of calibrated conveyer belt scales on a continuous basis.

Second, EPA questions the enforceability of $NO_X$ emission limits for Hibbing because the AO for that facility provides Hibbing an opportunity to demonstrate the $NO_X$ limits in the AO are not feasible. Enforceable $NO_X$ limits apply to Hibbing at all times.

Finally, EPA's concerns over the enforceability of the CEMS requirement for Hibbing are similarly groundless. The AO requires Hibbing to submit a plan to install a CEMS on Line 2 within 60 days of the effective date of the AO, and installation and certification of the CEMS no later than one year from the due date of the plan.

*Response:* EPA is not suggesting that Cliffs fails to measure pellet production sufficiently for sales and other business purposes. However, there is no indication that Cliffs measures the quantity of finished pellets produced each day on each line. Such daily measurements on each line would be necessary to establish compliance with a limit measured in lbs $SO_2$/long ton of pellets, on a 30-day rolling average, as specified in the AOs. Although the AOs contain a general requirement for retaining records of operational parameters related to emissions, there is no explicit requirement for maintaining daily records of the finished production from each line. Such records would be necessary for determining compliance with the lbs $SO_2$/long ton limits.

With respect to the commenters' second point, EPA agrees that Minnesota set a $NO_X$ limit that will apply to Hibbing's line 2. However, there are no specific criteria in the Minnesota SIP or the AO for Hibbing to ensure that an alternative limit, were it to be established, would be set in such a manner so as to satisfy BART. Also, the AO did not provide that the alternative limit had to be in the form of a SIP revision so as to be Federally enforceable as required by the Act.

Finally, EPA understands that the AO requires Hibbing to submit a plan to install a CEMS on Line 2, and possibly on Lines 1 and 3. Although there is an explicit requirement for a plan that provides for installation of the CEMS, there is not an actual requirement that the CEMS be installed.

*Comment:* Michigan and Minnesota appropriately determined BART for $SO_2$ after conducting a case-by-case evaluation of taconite pelletizing furnaces. Minnesota concluded that existing wet scrubbers for particulate control used at the Hibbing, Northshore, and United Taconite Line 1 furnaces would constitute BART when operated to also control $SO_2$ emissions. Minnesota's BART determination for United Taconite Line 2 was complicated by an intervening expansion project that relied on fuel blending to reduce emissions. Minnesota set the numeric BART limits for United Taconite at a level more stringent than the level the wet scrubbers alone were expected to consistently achieve. Cliffs retained the flexibility under the SIP to meet this $SO_2$ limit by installing a polishing scrubber or by adjusting the sulfur content in its fuel blend.

EPA claims that Minnesota's BART determination for United Taconite is not approvable because it did not reconsider the cost-effectiveness of flue gas desulfurization (FGD) after the expansion project. However, EPA cannot reject the SIP on this basis because EPA's own BART determination, in the final taconite FIP, also concluded that FGD is not cost-effective for United Taconite. Given United Taconite's ability to blend existing fuels, United Taconite's anticipated actual baseline $SO_2$ emission rate will be low enough to render a reduction from FGD not cost-effective. EPA reached the same conclusion that Minnesota reached in its SIP that BART for $SO_2$ at United taconite was an emission limit, not a control device. The FIP emission limit reflects a significant $SO_2$ reduction that can be accomplished through fuel blending or polishing controls, which is precisely the BART technology determination that EPA claims to object to in the SIP. The 0.6-percent sulfur content that EPA adds in the FIP does not reduce emissions and does nothing to advance regional haze goals. EPA's objection to Michigan's $SO_2$ BART determination for Tilden Line 1 must fail on the same basis. Tilden has also indicated that it will adjust fuels to ensure that baseline $SO_2$ emissions cannot justify FGD as a cost-effective control. Therefore, Michigan appropriately set an $SO_2$ limit for Tilden that did not reflect expensive add-on controls.

*Response:* EPA's FIP did not require FGDs because in November, 2012, EPA agreed that FGDs would not be necessary at United Taconite and Tilden because Cliffs stated an intention at that time to switch to lower sulfur fuels that would result in lower $SO_2$ emissions. However, Minnesota and Michigan's BART analyses were based upon the use of high sulfur fuels.

Therefore, this comment is largely misdirected because it is based upon EPA's FIP and not on the adequacy of Minnesota and Michigan's BART determinations. The commenter's assertion that EPA reached the same conclusion that Minnesota reached in its SIP is irrelevant because EPA made its determination based upon United Taconite's anticipated use of low sulfur fuels (with much lower $SO_2$ emissions) than the high sulfur coal in use by United Taconite currently, and upon which Minnesota's determination of BART was based.[4] EPA agreed that FGDs are not BART at this anticipated lower emission rate, but does not agree that FGDs are not BART when United Taconite is burning high sulfur coal. The commenter goes on to object to the 0.6-percent sulfur content limit in the FIP. This sulfur content restriction is also not relevant to whether or not Minnesota's SIP is approvable because it was neither suggested as a control option by the commenter at the time of Minnesota's rulemaking, nor considered by Minnesota.

EPA therefore maintains its position that Minnesota improperly rejected the use of FGD as a cost-effective technology for reducing $SO_2$ emissions from United Taconite's two lines. Also, as discussed in the August 15, 2012, proposed action, EPA believes that flue gas scrubbing, particularly in combination with proper fuel blending, is considerably more cost-effective than the cost-effectiveness estimates in Minnesota's regional haze SIP. Furthermore, subsequent to Minnesota's initial BART analysis, United Taconite switched to using high sulfur fuels on both of its lines, thus making FGD a more appropriate control measure to be considered.

Similarly for Michigan, EPA agreed that if Tilden switches to 100-percent natural gas,[5] the use of an FGD would not be cost-effective. However, Michigan's BART determination was based upon the use of high sulfur coal. As indicated in EPA's August 15, 2012 proposed action, EPA determined that an FGD would be more cost-effective than indicated by the Michigan regional haze SIP, and an FGD was therefore proposed as BART.

*Comment:* MPCA's statistical analysis establishing $SO_2$ limits for the Hibbing facility is correct because the data is normally distributed. Barr Engineering provided an analysis showing that the data is normally distributed. The approach Minnesota used to establish emission limits for each facility was well within the discretion afforded to states to identify BART emission limits.

*Response:* Non-parametric $SO_2$ emissions data appear to be typical across the industry. EPA agrees,

[4] As indicated in an 11–29–12 email exchange, Cliffs agreed to use lower sulfur fuels with the result of reducing its $SO_2$ emissions by half.

[5] As indicated in an 11–29–12 email exchange, Cliffs agreed to switch to natural gas, thereby reducing its $SO_2$ emissions by at least 80 percent.

however, that the available data for the majority of Hibbing's lines appear to be normally distributed.[6] However, as discussed in greater detail in the supplemental proposal, MPCA did not correctly apply the upper predictive limit (UPL) equation for normally distributed data. See 78 FR 8482–8483. If that equation were applied properly, the resulting limit for Hibbing would be significantly lower than the limit set by MPCA. In addition, the limits set by MPCA were expressed in terms of lbs $SO_2$/long ton of pellets produced. As discussed in the supplemental proposal, pellet production is not routinely measured at the end of an indurating furnace. Further, the AOs do not specify methods for determining pellet production by indurating furnace and do not specify any requirement to keep records of pellet production.

*Comment:* The $SO_2$ emission limits set by EPA in the FIP are identical to the emission limits set by Minnesota for Northshore and similar to the emission limits set for Hibbing. Therefore, even if EPA has legitimate technical corrections, the resulting changes are not substantive and should not result in wholesale rejection of the Minnesota regional haze SIP. These issues should have been resolved in discussions with Minnesota before EPA issued a FIP.

*Response:* EPA disagrees. The $SO_2$ emission limits set by Minnesota were expressed in terms of lbs $SO_2$/long ton of pellets produced, while the limits set by EPA are expressed in terms of lbs $SO_2$/hour. No demonstration has been made that the limits are equivalent. Furthermore, the emission limit set by EPA in the FIP for Northshore is temporary and must be recalculated after CEMS data has been collected.

*Comment:* Minnesota and Michigan were not required to reopen the BART technology determinations to accommodate EPA's unreasonably lengthy SIP review, and EPA may not reject the SIPs on this basis. EPA must approve SIPs that satisfy all applicable regulatory requirements pursuant to CAA section 110(k)(3). The public comment periods on Minnesota and Michigan's BART determinations closed on May 16, 2008, and June 23, 2010, respectively. Only technologies that were commercially available under Step 2 of the BART analysis at that time could be considered by the states in making BART technology determinations. EPA may not disapprove a state SIP because the states did not include information in their analyses that was not in existence at the time the technology determinations closed.

While the state's determinations were awaiting EPA action, Minnesota was engaged in an extensive process of collecting emissions data and performing analyses to set emission limits that reflected those technology determinations. The states must be able to rely on their BART determinations as they proceed to convert them to emission limits.

*Response:* As discussed previously, and contrary to the commenters' assertions, low $NO_X$ burners were ''available'' at the end of both states' public comment periods and have been for decades. As such, both states were required to determine whether low $NO_X$ burners were applicable to taconite furnaces, a task which they failed to do as neither state adequately considered the installation at U.S. Steel's Minntac facility or other available information.

While immaterial, EPA notes that the commenters provide no support for their assertion that the States were entitled to rely on their prior BART determinations as they ''proceeded to convert them to emission limits.'' On the contrary, the Act explicitly requires that all BART determinations be in the form of enforceable emission limits. *See* CAA sections 110(a)(2)(A) and 169A(b)(2). Neither the Act nor the BART Guidelines contemplate a scenario in which states are permitted to select a technology as BART, walling off that decision from further public scrutiny and comment, and then wait several years before setting emission limits to complete the BART process, ignoring any new information brought to their attention in the process.

*Comment:* The information that became available after the close of the states' public comment periods only further supports Minnesota and Michigan's initial BART determinations. Serious concerns continue to exist over the feasibility of low $NO_X$ burner technology on a case-by-case basis, and current cost and modeling information suggest that application of this technology would be both more expensive and less impactful from a visibility standpoint than EPA presumes. Furthermore, the most current cost information on FGD technology confirms that FGD technology is not a cost-effective control option for United Taconite or Tilden. Minnesota and Michigan made proper BART determinations in 2008 and 2010, and none of the information EPA cites provides grounds for changing these determinations.

*Response:* EPA published the February 6, 2013, supplemental proposed disapproval to provide additional information regarding EPA's views on Minnesota and Michigan's regional haze SIPs and to solicit additional comment regarding the proposal to disapprove the SIPs for failing to require BART at the applicable taconite plants. EPA is not soliciting further comment on its FIP as the supplemental proposal only addresses whether the states' SIPs should be disapproved for failing to provide an adequate analysis and require BART for applicable taconite plants. The commenters specifically raise the following points: (1) Low $NO_X$ burner technology is not technically feasible for straight-grate furnaces; (2) low $NO_X$ burner technology is not technically feasible for grate-kiln furnaces; (3) updated cost analyses demonstrate that low $NO_X$ burner technology is not cost-effective in light of limited visibility improvements; and (4) updated cost analyses demonstrate that FGD technology is not cost-effective for Tilden or United Taconite in light of limited visibility improvements. These points are not directly relevant to the disapproval of Minnesota and Michigan's regional haze SIPs for taconite plants. Indeed, given the conclusory nature of Minnesota and Michigan's SIPs regarding the feasibility of low $NO_X$ burners at these facilities, these comments appear to be seeking to provide alternative justifications for the States' BART determinations that the plans themselves do not rely upon.

In any case, the commenters' review of the feasibility of low $NO_X$ burners reflects an overly narrow view of technical feasibility. Any installation of control equipment at a facility that does not already have that equipment in place requires engineering to determine how best to design the equipment to work most effectively given the particular features of the particular facility. The commenters appear to be arguing that low $NO_X$ burners cannot be considered technically feasible because, for example, the engineering work done to design low $NO_X$ burners for the Essar facility cannot be directly applied to other facilities. The commenters cite selected design features that differ from facility to facility, such as the number of windboxes, but the commenters provide no reason for EPA to believe that any of these features pose problems that could not be solved by appropriate engineering analysis, just as has been done at multiple taconite lines and in countless other high temperature processes in numerous other industries.

[6] It should be noted that the Barr Engineering analysis combined the data from the different lines. Because even lines of the same size can function differently, it would be more appropriate to consider the lines separately.

Comments regarding costs and visibility benefits do not speak to whether Minnesota or Michigan appropriately analyzed these costs and benefits, and comments regarding time for installation appear to be untimely comments on the FIP that are not relevant to this rulemaking or the approvability of the States' regional haze SIPs. These issues are more appropriately discussed in the FIP, which includes a full and appropriate analysis of BART.

*B. Comment by MDEQ and Cliffs*

*Comment:* In spite of the provision in the BART Guidelines that states: ''[A]ll technologies should be considered, if available before the close of the State's comment period. You need not consider technologies that became available after this date,'' MDEQ felt that additional review was warranted and included in the SIP a requirement that Tilden must conduct further testing to provide the basis for $NO_X$ emission limits to be incorporated in the air permit for the Tilden facility. Tilden has since complied and its Permit to Install No. 148–12 contains an enforceable emission limit.

*Response:* Michigan has not submitted this permit as part of its regional haze SIP. To be approvable, emission limits representing BART must be contained in the SIP itself to guarantee Federal enforceability. Indeed, the Regional Haze Rule specifically states: ''The State must submit an implementation plan *containing* emission limitations representing BART.'' 40 CFR 51.308(e) (emphasis added). The requirement that BART emission limits be contained in the SIP is important because states can unilaterally remove or alter permit limits (that are not otherwise contained in an approved SIP or Federal standard) without federal approval. Moreover, permits expire. Consequently, the existence of a limit that Michigan has not submitted as part of its regional haze SIP cannot be considered to remedy deficiencies in the SIP.

EPA additionally notes that the $NO_X$ limit in Tilden's permit is 2,270 lbs/hr on a 30-day rolling average. According to Table 3–1 in appendix 9H of Michigan's regional haze SIP, the *maximum* 24-hour actual $NO_X$ emissions for Tilden were 26,208 lbs/day. Dividing by 24 results in an emission rate of 1,092 lbs/hr, which is less than half of the permitted limit. Thus, even if EPA were to agree that GCP was BART for this facility, Michigan has not demonstrated that a limit more than twice the facility's maximum actual emissions could possibly represent GCP.

*C. Comments by MDEQ*

*Comment:* The Michigan regional haze SIP provided extensive documentation of a full and appropriate analysis of BART that meets the requirements of the CAA.

*Response:* As discussed in the supplemental proposal, the Michigan regional haze SIP did not meet CAA requirements because of its failure to require emission controls that represent BART. The Michigan SIP defines BART as GCP, but there is no explanation of what GCP is and no $NO_X$ limits representing GCP. Michigan relies on a state permit that has not been submitted to EPA in the form of a SIP revision to argue that there is a limit on Tilden's $NO_X$ emissions. For the reasons explained in the prior response, this limit is insufficient to satisfy the requirements of the CAA and the Regional Haze Rule.

*Comment:* There was no information prior to the close of Michigan's public comment period on June 23, 2010, indicating that low $NO_X$ burners had been successfully utilized on indurating furnaces operating under the same circumstances as Tilden's grate-kiln furnace.

*Response:* In a June 23, 2010, letter to Michigan regarding its regional haze SIP, EPA stated that ''a low $NO_X$ main firing burner firing solid fuels'' had been installed at Minntac's grate-kiln furnace,'' (both Minntac and Tilden have grate-kiln furnaces) and that ''work done by other companies had demonstrated that burner designs that lower flame temperature can reduce $NO_X$ formation in taconite furnaces.'' Even after being notified of the above, Michigan did not conduct an adequate BART review of this technology in its regional haze SIP. MDEQ's only response to EPA's comment was that ''[t]he projects and technologies described above were not selected or proposed for BART, but rather were proposed primarily as projects to be studied, and were agreed to be completed as part of PSD permitting (not BART) or enforcement situations. None of the technologies and projects described above have been established for BART at taconite plants in Minnesota.'' Such circular logic, that low $NO_X$ burners should not be evaluated for BART because the States had not selected them as BART, is arbitrary and inadequate.

*Comment:* The FIP schedule of compliance does not allocate sufficient time for the permitting process.

*Response:* While not germane to this rulemaking, EPA notes that MDEQ has provided no information explaining why Tilden needs more than 26 months to accommodate permitting requirements.

*Comment:* MDEQ disagrees with the contents of EPA's July 2, 2012, conversation between EPA, U.S. Steel, and COEN, which is described in the August 15, 2012, proposed action. It states: ''There is also no increase in combustion related emissions, such as carbon monoxide or volatile organic compounds, and there is no reason for $SO_2$ emissions to increase through use of a low $NO_X$ burner.'' This conversation failed to recognize that the December 22, 2008 permitting action for the installation and operation of the auxiliary burners and conversion to low $NO_X$ burners included a net emission increase of 1,607 tons/year of carbon monoxide.

*Response:* The 2008 permitting action included an emission estimate only. Newer information from November 2009 letters from COEN and Hatch document why no increase in CO is expected due to the installation of low $NO_X$ burners. These assertions are further supported by U.S. Steel's draft permit for Lines 4 and 5 at Minntac, which was put out for pre-public notice review on May 14, 2013. This permit shows only a minimal increase in CO emissions according to PSD calculation methodology.

*D. Comments by the National Mining Association*

*Comment:* EPA's proposed disapproval of Minnesota and Michigan's regional haze SIPs is contrary to the federalism principles embedded in the CAA. Congress purposely created a cooperative federalism scheme in the CAA to define the roles of EPA and the states under the regional haze program. As the DC Circuit Court of Appeals recently noted in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 12 (D.D.C. 2012), ''Under the Clean Air Act, the Federal Government sets air quality standards, but States retain the primary responsibility (if the States want it) for choosing how to attain those standards within their borders. The Act thus leaves it to the individual States to determine, in the first instance, the particular restrictions that will be imposed on particular emitters within their borders. (If a State refuses to participate, the Federal Government regulates the sources directly.)'' Procedurally, this requires states to submit SIPs that address regional haze and establish BART determinations for sources within their borders. The states

then submit these plans to EPA, who must approve them if they satisfy all regulatory requirements. *See* CAA section 110(k).

In this instance, both Michigan and Minnesota submitted well-reasoned SIPs detailing their plans for addressing regional haze impacts. The entire taconite industry in the United States resides in these two states, and as a result, Minnesota and Michigan have an extensive and unparalleled understanding of the taconite mining and processing industry. Minnesota and Michigan used this industry knowledge and years of work and technical analysis to arrive at BART determinations for each BART-eligible taconite furnace. In doing so, Minnesota and Michigan carefully considered all available information provided through the end of their public comment periods and used this information to analyze available control technologies and the feasibility of installing these control technologies on each taconite furnace. The states then evaluated this information in light of the five statutory factors set forth by the CAA.

Minnesota and Michigan performed these evaluations on a case-by-case basis, in compliance with the CAA and in accordance with EPA guidance, and sought public comment on their determinations. The states carefully considered these comments before finalizing their SIPs and submitting them to EPA for approval on December 31, 2009 (Minnesota) and November 5, 2010 (Michigan).

EPA is now proposing to disapprove those determinations, not because the states erred in their reasoning, but because new information was presented in 2012. This information, a report on low-$NO_X$ burner technology used at the Minntac furnace, was not available when the states arrived at their BART determinations and it had not been peer-reviewed or subject to evaluation by the affected stakeholders. EPA's own guidance establishes a cut-off date for state technology determinations at the close of the state public comment period. The States, therefore, were not required to re-open their BART determinations based on this new information, and EPA does not have the authority to disapprove a valid and supported SIP based on information that was not available to the states at the time of their BART determinations.

EPA claims that it was compelled to consider this new information submitted during its 2012 public comment period when deciding whether to approve the SIPs, even if the States were not. EPA certainly could have considered the new information in many appropriate ways, but it chose not to. EPA could have shared the report with the States and then deferred to the States' evaluation of the data. Instead, EPA chose to ignore the States' assessment that the report was an insufficient demonstration that the technology was appropriate for the diverse furnace designs in the rest of the industry. EPA could have solicited a peer review of the report. Instead, EPA actively ignored the input of the furnace design engineers at Metso Engineering, who told the agency repeatedly that the burner designs would require 20–50-percent more fuel per ton of pellets and could cause pellet quality problems when installed on other taconite furnaces. EPA arbitrarily included in the record for its proposed FIP only the information that supported low $NO_X$ burners as BART instead of considering all the information made available to the agency and conducting the critical technology review that the CAA requires.

EPA's limited authority under the CAA does not authorize it to disapprove a SIP and impose a FIP merely because EPA prefers a different BART outcome. EPA's role is not to gather evidence to support a predetermined BART decision and actively ignore contrary information. When the available information does not provide a clear contrary path, EPA must defer to the states' method for weighing the available information and to the lawful and appropriate BART decision that arises from that method.

*Response:* EPA disagrees with NMA's assertion that ''EPA is now proposing to disapprove these determinations, not because the states erred in their reasoning, but because new information was presented in 2012.'' In a June 23, 2010, letter to Michigan regarding the state's draft regional haze SIP, EPA commented that ''a low $NO_X$ main burner firing solid fuels'' had been installed at Minntac and that ''work done by other companies had demonstrated that burner designs that lower flame temperature can reduce $NO_X$ formation in taconite furnaces.'' Similarly, in a February 10, 2012, letter to Minnesota responding to the state's draft regional haze SIP supplement for taconite facilities, EPA explained in detail that ''U.S. Steel has demonstrated the development and use of low $NO_X$ main burners that achieve 70 percent $NO_X$ reduction on its indurating lines.'' Therefore, both states were aware that low $NO_X$ burners had been successfully applied to indurating furnaces.

Although NMA states that EPA could have shared the report with the States and then deferred to the States' evaluation of the data, Minnesota had this information before EPA and made no apparent use of it. This information is listed in EPA's February 10, 2012, letter to Minnesota, which refers to three reports, from April 13, 2010, to December 1, 2011, informing the MPCA of U.S. Steel's success in installing low $NO_X$ burners on two of its indurating furnaces. (EPA also provided a copy of this letter to Michigan.) Even if Minnesota did not want to require general use of a proven technology on other facilities, there is no conceivable reason why Minnesota dismissed low $NO_X$ burners as BART at the U.S. Steel Minntac lines that were already using them. Although Metso Engineering ''told the agency repeatedly that the burner designs would require 20–50% more fuel per ton of pellets and could cause pellet quality problems,'' U.S. Steel documented that it had neither a fuel penalty nor pellet quality problems.

EPA's action cannot be characterized as disapproving submittals that satisfy CAA requirements ''merely because EPA prefers a different BART outcome.'' In commenting that EPA must approve state submittals that meet minimum CAA requirements, NMA apparently recognizes that EPA must disapprove state submittals that fail to meet CAA requirements. By dismissing clearly applicable $NO_X$ and $SO_2$ emission control options as infeasible, and by finding a group of $NO_X$ emission reduction practices (GCP) to be BART without defining or conducting the necessary five factor analysis of any particular good combustion practice, along with other SIP deficiencies, Michigan and Minnesota's submittals fail to satisfy CAA requirements regarding BART.

Finally, in regards to NMA's comment regarding a cut-off date for considering new information regarding available technologies, EPA provided a thorough response to a similar comment from Cliffs above.

*Comment:* EPA may not use a ''sue-and-settle'' approach to circumvent CAA requirements and usurp the role of the states. EPA's decision to seek comment on proposed deficiencies in the States' regional haze SIPs only *after* finalizing a FIP is contrary to the cooperative federalism scheme of the CAA. EPA's well established role is to review SIPs, determine whether they meet CAA criteria, and only if the state process fails to produce a compliant SIP can EPA issue its own FIP. By definition, a FIP may be used only to ''fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan.'' In this instance, EPA has put the

cart before the horse by finalizing a FIP and *then* seeking public comment on the supposed deficiencies that formed the basis for the FIP in the first place. EPA took this strange course of action to meet a deadline that the agency agreed to in a consent decree to settle litigation brought by the National Parks Conservation Association. EPA may not, however, use a self-imposed consent decree deadline to justify doing things out of order and in violation of the clear rulemaking process set forth in the CAA.

Prior to issuing its FIP, the only deficiency EPA had identified was a failure by Minnesota and Michigan (along with over 30 other states) to submit a timely regional haze SIP. Minnesota and Michigan rectified this deficiency by submitting their SIPs. These submittals triggered EPA's obligations under CAA section 110(k) to review the SIPs within one year and work with the states to make any changes necessary for federal approval. Instead of meeting its statutory obligation to act on the state submissions within one year, EPA entered into a consent decree with environmental organizations that set a court-ordered deadline for action on regional haze. In January 2012, EPA was on course to meet that deadline in Minnesota by proposing approval of the Minnesota regional haze SIP. However, when EPA decided to change course and propose a FIP, EPA had left itself with no time to properly identify deficiencies in the SIPs. EPA used the consent decree deadline as an excuse to stop working with the states to finalize the SIPs, to arbitrarily ignore contrary information, and to deny requests for additional time for public comments. EPA's rushed FIP that revealed a poor understanding of the taconite industry and significant shortcuts in the BART determination process. EPA did not propose disapproval of the state SIPs before rushing into a FIP, let alone provide ample opportunity for public comment or for the states to rectify any perceived deficiencies.

Had EPA followed proper procedure and discussed this new information with the states, EPA would have understood that the new low $NO_X$ burner trial information would not have changed the state BART determinations for taconite furnaces. The taconite industry is highly specialized, with each indurating furnace designed to process a specific ore type and produce pellets meeting varying specifications. An in-depth understanding of each taconite furnace is necessary to properly evaluate the applicability of ''new'' technology to these sources. Instead of taking the time necessary to understand these issues, EPA cited its looming consent decree and rushed through a ''one-size-fits-all'' FIP that requires all taconite furnaces to expend significant resources designing and installing technologies that are unproven and could severely impact their ability to manufacture a high quality product for global markets. This result would produce severe economic consequences for the taconite industry in Minnesota and Michigan. EPA may not use a self-imposed consent decree to cut the states out of a process Congress intended them to control and inflict this type of burden on the taconite industry.

*Response:* This comment is generally not relevant to the proposed disapproval and is primarily focused on EPA's decision to promulgate a FIP, as well as the substance of the FIP. For example, the comments objecting to EPA promulgating a FIP before acting on the states' SIPs and the comments regarding EPA's alleged ''sue-and-settle'' approach appear to be objecting to the timing of EPA's FIP promulgation rather than addressing appropriate action on the states' SIPs. NMA believes that EPA did not properly consider the ''highly specialized'' nature of taconite facilities, but NMA does not identify any particular features of any particular facilities that would make more or less control feasible. More pertinently, the comment suggests that the one-size-fits-all nature of the state SIPs (in all cases determining undefined ''good combustion practices'' to be BART) are an important deficiency.

*E. Letter From Congressman Richard M. Nolan*

Congressman Nolan submitted a March 4, 2013, letter to EPA asking EPA to approve the Minnesota SIP or amend the FIP to allow the taconite facilities sufficient time to comply with $NO_X$ BART emission limits. The comments submitted by the Congressman focus primarily on compliance deadlines and as such are FIP rather than SIP issues. Today's action disapproves the Minnesota SIP, however, EPA notes that the compliance deadlines in EPA's FIP have already been stayed by the Eighth Circuit and EPA is currently reviewing several petitions for reconsideration that request additional extensions of the compliance deadlines for $NO_X$ BART.

*F. Comments by the Minnesota Pollution Control Agency*

*Comment:* The proposed SIP disapproval presents unnecessary challenges to the historically strong state/Federal relationship in Minnesota. EPA's actions rendered moot a significant investment of time and resources by the MPCA.

*Response:* EPA also values its strong relationship with MPCA, but this concern cannot justify approving a SIP that does not meet CAA requirements. EPA appreciates MPCA's efforts and the time it invested on the Minnesota regional haze SIP, which EPA approved in full except with regard to the BART determinations for taconite facilities. EPA encourages MPCA to consider submitting a SIP revision for taconite BART that EPA could evaluate for approval and potential replacement of EPA's FIP.

*Comment:* EPA's BART Guidelines do not require states to re-open final BART decisions to consider a technology that becomes available after the close of the public comment period on the state's SIP. MPCA was clear that its May 2012 regional haze SIP supplement was not re-opening its 2009 BART determinations for taconite facilities. MPCA had valid reasons to exercise this discretion because MPCA knew that the pilot project for low $NO_X$ burners at Minntac was limited to a single type of taconite furnace and that the pilot project clearly illustrated that low $NO_X$ burners required significant testing and operational changes at the two furnaces tested.

*Response:* As discussed above in response to a similar comment by Cliffs, MPCA is misreading EPA's BART Guidelines. Low $NO_X$ burners are in wide use across a wide range of industries, many involving combustion conditions comparable to those in the taconite industry, and this technology has been commercially available since long before MPCA even began considering BART for taconite plants. Therefore, statements in the BART Guidelines regarding the consideration of technologies that become available after the close of a state's comment period are not germane here.

MPCA's comment suggests that MPCA interprets ''available'' to mean not just commercially available, but also ''applicable'' at a particular facility. This interpretation is inconsistent with the BART Guidelines, which clearly differentiate between the concepts of ''availability'' and ''applicability.'' For a technology like low $NO_X$ burners that has long been commercially available, the BART Guidelines do not provide states with the authority to disregard information that indicates that an ''available'' technology has also become ''applicable,'' and therefore technically feasible, for use at a particular source type.

Furthermore, MPCA offered multiple comment periods throughout its

regional haze SIP development process. MPCA wishes to treat its last comment period as merely addressing the emission limits for a BART technology it had selected previously, without offering the opportunity to reconsider whether the selection of that technology was appropriate. Thus, even assuming MPCA's interpretation of ''available'' were correct, MPCA provides no rationale for interpreting the BART Guidelines in such a way so as to foreclose the consideration of technologies that become available after the close of one comment period, but before the close of another, later comment period. Therefore, the BART Guidelines provide no justification for MPCA to disregard the information that has come to light over the last several years that low $NO_X$ burners are ''applicable'' and technically feasible for the taconite facilities in the state.

Installation of a new control technology at a facility commonly requires ''significant testing and operational changes.'' Indeed, EPA's FIP provided time for exactly this effort. Taken to its logical extreme, MPCA's comment suggests that states could not require new controls at facilities unless the controls have already been installed there. On the contrary, the need for testing and operational changes alone cannot justify a finding that controls are technically infeasible.

*Comment:* EPA should stay implementation of its FIP to resolve procedural issues with the SIP actions. EPA's supplemental proposed disapproval provides no legal authority, either from the CAA or from case law, which allows EPA to adopt a final FIP before EPA formally disapproves a state's SIP. EPA's claim that it has a mandate to promulgate such a FIP without regard to whether EPA has disapproved the State's SIP is unsupported and contrary to case law.

*Response:* EPA disagrees. EPA's final rule promulgating the FIP clearly explained the Agency's legal authority for taking action. Section 110(c) of the CAA requires EPA to promulgate a FIP after finding that a state has failed to make a required submission unless two events occur before EPA promulgates a FIP: (1) The state corrects the deficiency, and (2) EPA approves the state's SIP. We note, however, that this comment is moot because the Eighth Circuit has since stayed the effective date of EPA's FIP.

*Comment:* EPA's June 12, 2012, final action simply stated that EPA was deferring action with regard to BART for taconite facilities because Minnesota did not select EPA's chosen control technology. By publishing the supplemental proposed disapproval on the same day as the final FIP, EPA is not providing Minnesota with a meaningful opportunity to comment on EPA's proposed action because EPA has already decided on its course of action. Under the CAA, EPA's supplemental proposed disapproval should afford Minnesota the opportunity to remedy the specific issues EPA cites as not adequately meeting the requirements of the CAA.

*Response:* First, MPCA mischaracterizes EPA's June 12, 2012 final action, in which EPA actually stated that it was deferring action to evaluate information indicating that BART should be defined as a more effective control technology. 77 FR 34801 at 34806. Second, as EPA explained in an earlier response to a similar comment from Cliffs, a FIP is a gap-filling measure only. *See* CAA section 302(y). As a result, a FIP promulgated by EPA remains in place only until a state submits a SIP correcting the inadequacy and that SIP is approved by EPA. In this instance, MPCA and other commenters had a meaningful opportunity to comment on EPA's supplemental proposed disapproval and explain why EPA's proposed action was incorrect. Had EPA agreed with MPCA or other commenters and approved the Minnesota and Michigan BART determinations for taconite facilities instead, EPA's FIP would have been replaced. Therefore, MPCA's assertions are incorrect. Furthermore, we again encourage MPCA to consider submitting a SIP revision for taconite BART that EPA could evaluate for approval and potential replacement of EPA's FIP.

*Comment:* EPA's August 15, 2012, proposed action did not propose to disapprove Minnesota's regional haze SIP for taconite facilities. The only mention of the disapproval of Minnesota's SIP is in the preamble where EPA makes an unsubstantiated claim that the disapproval is for a failure to make a required submission. MPCA objects to the absence of substantive analysis or detail about what required submission Minnesota did not make. According to *Train* v. *Natural Resources Defense Council,* 421 U.S. 60 (1975), EPA can only disapprove a SIP if it does not adequately meet the requirements of CAA section 110(a)(2).

Also, no mention of the disapproval of the SIP is made in the ''Proposed Agency Action'' section of the **Federal Register** notice, meaning that EPA failed to take official agency action on Minnesota's regional haze SIP. Finally, EPA's assertion that the August 15, 2012, proposed rule served as an ''implicit disapproval'' of Minnesota's regional haze SIP represents an acknowledgement that EPA failed to take formal agency action. The CAA has no provision for ''implicit disapprovals.''

*Response:* EPA's August 15, 2012, proposed action noted that the BART requirement ''has not been satisfied by Minnesota or Michigan for its subject taconite plants,'' and the proposed codification for Minnesota stated that ''[t]he requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by the state on December 30, 2009, and on May 8, 2012, does not meet the requirements of 40 CFR 51.308(e) with respect to $NO_X$ and $SO_2$ emissions from [the listed taconite facilities].'' This proposed codification represents ''official agency [proposed] action.''

On the other hand, EPA agreed with comments expressing concern that the August 12, 2012 notice did not provide adequate explanation of EPA's rationale for proposing to disapprove in part the two States' regional haze SIPs. In response to those comments, EPA published a supplemental notice on February 6, 2013, at 78 FR 8478, elaborating on EPA's rationale for proposing to disapprove in part these SIPs.

EPA did not claim, in its August 12, 2012 proposed action or elsewhere, that the disapproval was for failure to submit a timely regional haze SIP. EPA stated that its FIP obligation was based on a finding that the states had failed to make the submittal (an obligation that remains in the absence of EPA approval of a subsequently submitted SIP). Similarly, EPA did not make the assertion regarding ''implicit disapproval'' claimed by Minnesota. Instead, EPA stated that its August 12, 2012 proposed action ''provided a full discussion of why EPA proposed to conclude that the BART criteria resulted in more stringent control than was required by the States, thus implicitly concluding that the state submittals did not require controls representing BART.'' Furthermore, the action proposed regulatory text stating that the state submittals failed to require BART for the taconite plants.

In regard to MPCA's comment regarding the DC Circuit's decision in *Train* v. *NRDC,* that case did not deal with a regional haze SIP, which, in addition to satisfying the requirements of CAA section 110(a)(2), must also satisfy the requirements of CAA section 169A and the Regional Haze Rule.

*Comment:* MPCA comments that EPA's claims of authority to promulgate a FIP based on a finding of failure to

submit a SIP fail to recognize that Minnesota ''submitted a SIP within the timeline [prescribed] by the 2009 Notice of Deficiency.'' MPCA objects that the administrative record omits an April 1, 2010, letter finding Minnesota's SIP to be complete.

*Response:* This comment regarding FIP authority has been addressed in EPA's FIP and is not relevant here. EPA has made the addition to the record that MPCA requested.

*Comment:* MPCA comments that EPA's supplemental proposed disapproval does not remedy EPA's official statements from the June 12, 2012, final action in which EPA stated that it would act through a FIP because Minnesota did not select EPA's chosen control technology for BART. MPCA finds these findings to be contrary to case law, citing *Virginia* v. *EPA,* 108 F.3d 1397, 1406 (D.C. Cir. 1997), without explanation.

*Response:* It is not clear why MPCA commented on statements in the June 12, 2012, final action regarding prospective EPA actions, because the actual actions as proposed on August 15, 2012, and February 6, 2013, were available for comment and were more indicative of EPA's actions than its prior anticipatory statements. In any case, MPCA is misrepresenting EPA's June 12, 2012, statements. Nowhere in this notice did EPA ''simply state that Minnesota did not select EPA's chosen control technology.'' Instead, EPA noted the ''significant information about additional $NO_X$ controls [that it received] in comments on [the January 25, 2012] proposed rulemaking, [prompting EPA to defer action to allow] EPA time to evaluate properly additional potential emission controls for the taconite facilities.''

As explained in the supplemental proposed disapproval, EPA's subsequent evaluation led to its view that: (1) Minnesota and Michigan did not properly evaluate BART for $NO_X$ and $SO_2$ for taconite plants because they dismissed technically and economically feasible control technologies without adequate justification; (2) Minnesota and Michigan adopted a ''control technology'' (GCP) for $NO_X$ that was not defined or properly analyzed; (3) Minnesota did not demonstrate that its emission limits in fact represented GCP, while Michigan did not include $NO_X$ emission limits in its SIP at all; and (4) Minnesota failed to make its emission limits appropriately enforceable. MPCA notably does not contest EPA's view that low $NO_X$ burners and FGD are more effective at reducing emissions than GCP. More precisely, MPCA does not argue that GCP is either equivalent to or better than these technologies. That is, Minnesota makes no argument that its chosen technology can equally well be considered the best available. Thus, the failure of the states to follow EPA's implementing regulations or the BART Guidelines when selecting BART for these facilities had the practical consequence of the SIPs requiring less than BART. Finally, *Virginia* v. *EPA,* to the extent it is relevant here, does not instruct EPA to approve SIPs that fail to meet CAA requirements.

*Comment:* EPA correctly states that Minnesota essentially re-opened its 2009 BART determinations for the affected electric generating units (EGUs). MPCA finds that an extensive administrative record compiled by EPA in support of revised action supported re-opening the EGU BART determinations. MPCA finds in contrast that it lacked an adequate administrative record to justify a re-opening of the taconite BART determinations.

*Response:* At issue here is whether MPCA should have more thoroughly considered evidence indicating the applicability and effectiveness of low $NO_X$ burners. This comment suggests that MPCA undertook a partial consideration of this evidence in order to evaluate whether a more thorough review and ''re-opening'' of its BART determinations was necessary. However, as has been elaborated several times in the responses above, EPA disagrees that MPCA's partial consideration of information regarding the technical feasibility of low $NO_X$ burners was reasonable or sufficient to satisfy the States' obligations under the CAA and Regional Haze Rule to evaluate all technically feasible control options when selecting BART.

*Comment:* MPCA closes its comments by recommending several modifications to the FIP.

*Response:* These comments are pertinent to a completed rulemaking promulgating the FIP and are not germane to this rulemaking regarding disapproval of Minnesota's regional haze SIP.

## III. What action is EPA taking?

EPA is disapproving in part the Michigan and Minnesota regional haze SIPs for failure to satisfy BART requirements for $NO_X$ and $SO_2$ emissions from the subject taconite facilities within these states. Specifically, EPA is disapproving in part the Michigan and Minnesota regional haze SIPs for failure to comply with 40 CFR 51.308(e)(1)(ii)(A), which requires BART determinations ''to be based on an analysis of the best system of continuous emission control technology'' that, among other things, ''take[s] into consideration the technology available.'' EPA is also disapproving in part the Michigan regional haze SIP for failure to comply with 40 CFR 51.301 and 51.308(e), which require BART determinations to be in the form of enforceable ''emission limitations'' contained in SIPs.

For $NO_X$ emissions, Minnesota's SIP failed to ''take into consideration the technology available'' because it summarily dismissed a technically feasible control technology, low $NO_X$ burners, without adequate explanation. Furthermore, by selecting an unidentified set of practices as BART instead of low $NO_X$ burners, Minnesota's SIP failed to require the emission reductions associated with ''the best system of continuous emission control technology available.'' For $SO_2$ emissions, Minnesota's SIP also failed to make BART determinations for certain facilities ''based on an analysis of the best system of continuous emission control technology'' because Minnesota did not reasonably consider the ''costs of compliance'' when it improperly rejected the most stringent control option, FGD.

Similarly, Michigan's SIP also failed to ''take into consideration the technology available'' because it too summarily dismissed low $NO_X$ burners as a technically infeasible control option. Also, by selecting an unidentified set of practices as BART instead of low $NO_X$ burners, Michigan's SIP failed to require the emission reductions associated with ''the best system of continuous emission control technology available.'' Moreover, unlike Minnesota's SIP, Michigan's SIP did not include ''emission limitations representing BART'' for its Tilden facility. While Michigan commented that it has since issued a permit establishing $NO_X$ emission limits for the Tilden facility, neither these limits nor any other emission limits were included in the SIP as required. Finally, for $SO_2$ emissions, Michigan's SIP also failed to make BART determinations for certain facilities ''based on an analysis of the best system of continuous emission control technology'' because Michigan did not reasonably consider the ''costs of compliance'' when it improperly rejected the most stringent control option, FGD.

A discussion of how this action relates to the taconite FIP that was published on February 6, 2013 is discussed in the February 6, 2013 supplemental proposed disapproval.

## IV. Statutory and Executive Order Reviews

*Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

*Paperwork Reduction Act*

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.*).

*Regulatory Flexibility Act*

This action merely disapproves state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*Unfunded Mandates Reform Act*

Because this rule disapproves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it disapproves a state rule.

*Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

*National Technology Transfer Advancement Act*

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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 29, 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* CAA section 307(b)(2).

### List of Subjects in 40 CFR Part 52

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

Dated: September 11, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1183 is amended by adding paragraph (o) to read as follows:

**§ 52.1183 Visibility protection.**

* * * * *

(o) The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by the state on November 5, 2010, does not meet the requirements of 40 CFR 51.308(e) with respect to $NO_X$ and $SO_2$ emissions from Tilden Mining Company L.C. of Ishpeming, Michigan. The requirements for this facility are satisfied by complying with § 52.1183(k–n)

■ 3. Section 52.1236 is amended by adding paragraph (d) to read as follows:

**§ 52.1236 Visibility protection.**

* * * * *

(d) The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted by the state on December 30, 2009, and on May 8, 2012, does not meet the requirements of 40 CFR 51.308(e) with respect to $NO_X$ and $SO_2$ emissions from United States Steel Corporation, Keetac of Keewatin, Minnesota; Hibbing taconite company of Hibbing, Minnesota; United States Steel Corporation, Minntac of Mountain Iron, Minnesota; United Taconite, LLC of Forbes, Minnesota; ArcelorMittal Minorca Mine, Inc. near Virginia, Minnesota; and Northshore Mining Company-Silver Bay of Silver Bay, Minnesota. The requirements for these facilities are satisfied by complying with the requirements of § 52.1235.

[FR Doc. 2013–23394 Filed 9–27–13; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R09–OAR–2013–0508; FRL–9900–96–Region 9]**

## Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the Antelope Valley portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 26, 2013 and concerns standards for continuous emissions monitoring systems and oxides of sulfur (SOx) emissions. We are approving local rules that regulate continuous emissions monitoring systems and standards for gaseous sulfur emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on October 29, 2013.

**ADDRESSES:** EPA has established docket number EPA–R09–2013–0508 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (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:** Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

### Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

### I. Proposed Action

On July 26, 2013 (78 FR 45114), EPA proposed to approve the following rules into the California SIP.

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| AVAQMD | 218 | Continuous Emission Monitoring | 07/17/12 | 02/06/13 |
| AVAQMD | 218.1 | Continuous Emission Monitoring Performance Specifications | 07/17/12 | 02/06/13 |
| AVAQMD | 431.1 | Sulfur Content of Gaseous Fuels | 08/21/12 | 04/22/13 |

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

### II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

### III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

### IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive 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 Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 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, Intergovernmental relations, Carbon monoxide, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 4, 2013.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(428)(i)(B) and (c)(429)(i)(B) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(428) * * *

(i) * * *

(B) Antelope Valley Air Quality Management District.

(*1*) Rule 218, ''Continuous Emission Monitoring,'' amended on July 17, 2012.

(*2*) Rule 218.1, ''Continuous Emission Monitoring Performance Specifications,'' adopted on July 17, 2012.

* * * * *

(429) * * *

(i) * * *

(B) Antelope Valley Air Quality Management District.

(*1*) Rule 431.1, ''Sulfur Content of Gaseous Fuels,'' amended on August 21, 2012.

* * * * *

[FR Doc. 2013–23247 Filed 9–27–13; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R03–OAR–2012–0368; FRL–9901–41–Region3]**

## Approval and Promulgation of Air Quality Implementation Plans; West Virginia; West Virginia's Redesignation Request for the Wheeling, WV–OH 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a redesignation request and State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) requested that the West Virginia portion of the Wheeling, WV–OH fine particulate matter ($PM_{2.5}$) nonattainment area (''Wheeling Area'' or ''Area'') be redesignated as attainment for the 1997 annual $PM_{2.5}$ national ambient air quality standard (NAAQS). In this rulemaking action, EPA is approving the 1997 annual $PM_{2.5}$ redesignation request for the West Virginia portion of the Area. EPA is also approving the maintenance plan SIP revision that the State submitted in conjunction with its redesignation request. The maintenance plan provides for continued attainment of the 1997 annual $PM_{2.5}$ NAAQS for 10 years after redesignation of the West Virginia portion of the Area. The maintenance plan includes a comprehensive emissions inventory that EPA is approving in this rulemaking. The maintenance plan also includes an insignificance determination for the onroad motor vehicle contribution of $PM_{2.5}$, nitrogen oxides ($NO_X$), and sulfur dioxide ($SO_2$) for the West Virginia portion of the Area for purposes of transportation conformity. EPA is also approving West Virginia's insignificance determination for transportation conformity. In addition, EPA is also finding that the Area continues to attain the standard. This rulemaking action approving the 1997 annual $PM_{2.5}$ NAAQS redesignation request, maintenance plan, comprehensive emissions inventory, and insignificance determination for transportation conformity for the West Virginia portion of the Area is based on EPA's determination that the Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA).

**DATES:** This final rule is effective on September 30, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0368. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 8, 2012, the State of West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a request to redesignate the West Virginia portion of the Wheeling Area nonattainment area to attainment for the 1997 annual $PM_{2.5}$ NAAQS. The Wheeling Area is composed of Marshall and Ohio Counties in West Virginia and Belmont County in Ohio. On December 11, 2012 (77 FR 73575), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. Pursuant to sections 107(d)(3)(E) and 175A of the CAA, the NPR proposed approval of West Virginia's redesignation request, a SIP revision that establishes a maintenance plan for the West Virginia portion of the Area that provides for continued attainment of the 1997 annual $PM_{2.5}$ NAAQS for at least 10 years after redesignation, a comprehensive emissions inventory for

$PM_{2.5}$, $NO_X$ and $SO_2$, and the insignificance determination for the onroad motor vehicle contribution of $PM_{2.5}$, $NO_X$ and $SO_2$ for transportation conformity purposes for the West Virginia portion of the Area.

On July 24, 2013 (78 FR 44487), EPA published a supplemental NPR that revised and expanded the basis for proposing approval of West Virginia's request in light of developments since EPA issued its initial proposal on December 11, 2012. Principally, the supplemental NPR addressed the effects of the decision of the D.C. Circuit Court's January 4, 2013 decision to remand to EPA two final rules implementing the $PM_{2.5}$ NAAQS. In the supplemental NPR, EPA proposed to proceed with the approval of the request to designate the Wheeling Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS and the associated maintenance plan. On June 24, 2013, WVDEP supplemented its March 8, 2012 SIP submittal with the 2008 ammonia and volatile organic compound (VOC) emissions inventory which EPA proposed to approve in the supplemental NPR, in conjunction with the $PM_{2.5}$, $NO_X$ and $SO_2$ emissions inventory that EPA previously proposed to approve, as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of the CAA. *See* December 11, 2012 (77 FR 73575) and July 24, 2013 (78 FR 44487). In addition, EPA also proposed to approve the insignificance determination for the onroad motor vehicle contribution of $PM_{2.5,}$ $NO_X$ and $SO_2$ for transportation conformity purposes for the West Virginia portion of the Area.

Other specific details of West Virginia's redesignation request, the associated maintenance plan SIP revision, the comprehensive emissions inventory, and insignificance determination, and the rationales for EPA's proposed actions are explained in both the NPR and the supplemental NPR and will not be restated here. No public comments were received on either of the NPRs.

## II. Final Action

EPA is approving the redesignation request, the maintenance plan, the comprehensive emissions inventory, and the insignificance determination for transportation conformity for the West Virginia portion of the Area because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Approval of this redesignation request will change the designation of the West Virginia portion of the Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is also approving the associated maintenance plan for the West Virginia portion of the Area as a revision to the West Virginia SIP, because it meets the requirements of section 175A of the CAA. In addition, EPA is also approving the comprehensive emissions inventory as a revision to the West Virginia SIP because it meets the requirements of section 172(c)(3) of the CAA. Furthermore, EPA is approving the transportation conformity insignificance determination submitted by West Virginia for this Area in conjunction with its redesignation request.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves West Virginia of the obligation to comply with nonattainment-related planning requirements for this $PM_{2.5}$ Area pursuant to Part D of the CAA. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

## III. Statutory and Executive Order Reviews

### *A. General Requirements*

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 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 approving the redesignation request, the maintenance plan, the comprehensive emissions inventory and transportation conformity insignificance determination for the West Virginia portion of the Wheeling Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

*40 CFR Part 52*

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

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

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

Dated: September 13, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR parts 52 and 81 are amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 1997 Annual $PM_{2.5}$ Maintenance Plan for Wheeling, WV–OH Area at the end of the table to read as follows:

**§ 52.2520 Identification of plan.**

* * * * *

(e) * * *

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA-approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 1997 Annual $PM_{2.5}$ Maintenance Plan for the Wheeling WV–OH Area. | Marshall and Ohio Counties | 3/8/12, 6/24/13 | 9/30/13, *[Insert page number where the document begins]*. | See § 52.2526(i) and § 52.2531(f). |

■ 3. Section 52.2526 is amended by adding paragraph (i) to read as follows:

**§ 52.2526 Control strategy: Particulate matter.**

* * * * *

(i) EPA approves the maintenance plan for the West Virginia portion of the Wheeling, WV–OH 1997 $PM_{2.5}$ Nonattainment Area (Marshall and Ohio Counties). The maintenance plan establishes a determination of insignificance for $PM_{2.5}$, $NO_X$ and $SO_2$ for transportation conformity purposes.

■ 4. Section 52.2531 is amended by adding paragraph (f) to read as follows:

**§ 52.2531 Base year emissions inventory.**

* * * * *

(f) EPA approves as a revision to the West Virginia State Implementation Plan the comprehensive emissions inventory for the Wheeling, WV–OH fine particulate matter ($PM_{2.5}$) nonattainment area submitted by the West Virginia Department of Environmental Protection on March 8, 2012 and June 24, 2013. The emissions inventory includes emissions estimates that cover the general source categories of point sources, nonroad mobile sources, area sources, onroad mobile sources and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides ($NO_X$), volatile organic compounds (VOC), $PM_{2.5}$, ammonia ($NH_3$), and sulfur dioxide ($SO_2$).

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

■ 6. In § 81.349, the table for West Virginia—$PM_{2.5}$ (Annual NAAQS) is amended by revising the entry for the Wheeling, WV–OH Area to read as follows:

**§ 81.349 West Virginia.**

* * * * *

WEST VIRGINIA—$PM_{2.5}$

[Annual NAAQS]

| Designated area | Designation [a] | |
|---|---|---|
| | Date [1] | Type |
| * | * | * | * | * |
| **Wheeling, WV–OH** | | |
| Marshall County ..... | 9/30/13 | Attainment. |
| Ohio County ..... | 9/30/13 | Attainment. |
| * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2013–23691 Filed 9–27–13; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 15

**[ET Docket No. 07–113; RM–11104; FCC 13–112]**

## Operation in the 57–64 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document modifies the Commission's rules for intentional radiators operating on an unlicensed basis in the 57–64 GHz frequency range (60 GHz). The rules were modified to allow higher emission limits for 60 GHz devices that operate outdoors with very high gain antennas to encourage broader deployment of point-to-point broadband systems; to specify the emission limit for all 60 GHz devices as an EIRP power level to promote repeatability of measurement data and provide uniformity and consistency in the rules; and to eliminate the requirement for certain 60 GHz devices to transmit identification information (transmitter ID). The amended rules will allow longer communication distances for unlicensed 60 GHz point-to-point systems that operate outdoors and thereby extend the ability of such systems to provide broadband service, particularly to office buildings and other commercial facilities. The Commission believes that the enhanced 60 GHz systems that will be allowed by these rule changes will help the Commission fulfill its objectives to bring broadband access to every American by providing additional competition in the broadband market, lowering costs for small business owners accessing broadband services, and supporting the deployment of 4th generation (4G) and other wireless services in densely populated areas.

**DATES:** Effective October 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Anh Wride, Office of Engineering and Technology, 202–418–0577, *Anh.Wride@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, ET Docket No. 07–113, FCC 13–112, adopted August 9, 2013 and released August 9, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

### Summary of Report and Order

1. The Commission adopted the *Notice of Proposed Rulemaking* (NPRM), 72 FR 39588, July 19, 2007, in this proceeding in response to a petition for rule making from the Wireless Communications Association (WCA). To encourage broader deployment of point-to-point digital systems in the 60 GHz band without increasing the potential for harmful interference, the Commission proposed to specify the emission limit for 60 GHz devices as EIRP instead of as power density units, and to increase the emission limit from 40 dBm to 82 dBm for devices using an antenna with gain greater than 51 dBi. The Commission also proposed to increase the peak power and average power EIRP limits relative to a specific antenna gain for devices located outdoors or those located indoors with emissions directed outdoors, *e.g.,* through a window, and to eliminate the transmitter identification requirement for devices located indoors. The Commission did not propose to make any change to the spurious emission limit but proposed to also express this limit alternatively as EIRP to be consistent with the measurement unit proposed for main-beam fundamental emissions.

2. In the Report and Order, the Commission modified its rules to allow operation at higher power levels by 60 GHz unlicensed devices that use an antenna exceeding a specific gain and operate outdoors. Specifically, for 60 GHz devices located outdoors, we increase the average equivalent isotropically radiated power (EIRP) limit from 40 dBm to 82 dBm minus 2 dB for every dB that the antenna gain is below 51 dBi, and peak EIRP emission limit from 43 dBm to 85 dBm minus 2 dB for every dB that the antenna gain is below 51 dBi. Also, the amended rules will specify the emission limits for all 60 GHz devices in terms of equivalent isotropically radiated power (EIRP). These rule changes will provide needed flexibility to improve performance and provide cost savings for unlicensed devices to support broadband service in the 60 GHz band. These revisions also have the potential to foster the development of products with longer operating distances than are achievable under the current rules and to promote use of the 60 GHz band as a vehicle for broadband transmission links. This will encourage the development of very high speed wireless links for use in locations where highways, parking lots, or other obstructions may prevent the extension of fiber or wireline connections, to connect multiple buildings in a campus environment, or to provide backhaul connections for new 4G wireless services.

3. The Commission also amended its rules to specify the antenna requirements for compliance testing of 60 GHz devices that will operate at higher power with very high gain antennas and to eliminate the transmitter identification (transmitter ID) requirement.

### Power Limits

4. The Commission modified its rules to specify the emission limits for 60 GHz devices in terms of EIRP. No party objected or provided any substantive comments to our proposals. The Commission observes that the WCA petitioned for this change because the existing rules specify the emission limit at a measurement distance of 3 meters, a distance that would be in the near field of a high gain 60 GHz antenna, and measurements in this region of the antenna are difficult to make due to the high variability of the RF field. Consequently, when this measurement distance is in the near field of a 60 GHz antenna, the test results can vary substantially with varying distances from the transmitter, making it very difficult to demonstrate compliance of the equipment under test with the emission limit due to lack of repeatability of the test results. The Commission finds that specifying the emission limits for 60 GHz devices as EIRP, which can be easily calculated, will simplify the process for demonstrating compliance with the rules. It further notes that in other sections of the part 15 rules, *e.g.,* the spread spectrum rules in § 15.247 and the Unlicensed National Information Infrastructure (UNII) rules in § 15.407, the emission limit for those devices is specified in terms of EIRP. Although in the *NPRM* the Commission proposed to maintain the existing power density limits for devices other than very high gain systems as an alternative to the EIRP limits as long as the 3-meter measurement distance is in the antenna far field, it finds that specifying the emission limit for all 60 GHz devices as EIRP will provide uniformity and consistency in the rules for all 60 GHz

devices, simplify the measurement procedure, and improve the repeatability of test results. Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of our rules may be used to demonstrate compliance.

5. The Commission amended § 15.255(b)(1) of the rules to specify emission limits for all unlicensed 60 GHz devices in terms of EIRP. Because 60 GHz devices are already required to be tested for compliance, this rule change does not increase the burden on compliance testing for manufacturers and could facilitate the measurement of emission levels for both point-to-point and networking 60 GHz devices while greatly improving measurement accuracy.

6. Although the record provides some support for the proposals made in the *NPRM* to increase the average and peak emission limits for transmitters with very high gain antennas, some commenters have expressed concern over the potential for window links using higher power levels indoors to interfere with the operation and deployment of WPAN and other consumer devices. The Commission thus is modifying the rules to allow increased power for 60 GHz transmitters using very high gain antennas located outdoors, but it will not apply these higher limits to any antenna located indoors, including window links.

**Indoor Devices, Including Window Links**

7. The Commission will continue to require that all 60 GHz devices using indoor antennas, including those with emissions directed outdoors as window links, comply with the existing lower emission limits. It notes that our rules already permit the use of 60 GHz point-to-point transmitters with a relatively low-gain antenna (*i.e.,* up to 30 dBi at the 10W (40 dBm) maximum EIRP, with a transmitter output power of 10 dBm) as window links, and they are now co-located with wireless personal area networking (WPAN) devices without causing harmful interference. In most cases, both types of devices are under the control of the same party who could take steps to eliminate interference, *e.g.,* by moving one or both devices a short distance away from one another. However, the Commission agrees with Motorola that in public locations such as shopping malls or airports, where a 60 GHz point-to-point device and a WPAN network may not be under the same ownership or otherwise control, the use of higher-power EIRP for window links may present concerns and difficulties in resolving potential interference among different equipment operators. The Commission further observes that BridgeWave, a manufacturer of point-to-point 60 GHz devices, has submitted that window links are very rare because office building occupants rarely tolerate indoor mounting of a radio behind a window. The Commission thus concludes that window links may not generally be needed (or used) to link one building to another, but if they are used, they must continue to comply with the lower emission limit permitted under the current rules. Alternatively, operators can link one building to another by using higher power point-to-point outdoor installations (*e.g.,* from rooftop to rooftop). In addition, the Commission does not expect that higher power 60 GHz transmitters using very high gain antennas would be a common candidate for residential installation destined to replace digital subscriber line (DSL) and cable modem broadband services, because the high cost of the point-to-point devices would preclude their off-the-shelf retail marketing to consumers. Therefore, out of abundance of caution and in view of the limited use of window links as reflected in the record, the Commission will not permit window links to operate at the higher EIRP levels.

**Outdoor Devices**

8. Consistent with our proposals in the *NPRM,* the Commission modified the rules to adopt an average EIRP limit of 82 dBm and a peak EIRP limit of 85 dBm, in each case minus 2 dB for every dB that the antenna gain is below 51 dBi, for 60 GHz devices using very high gain antennas that are located outdoors. It finds that this increase in emission limits for antennas located outdoors will facilitate the use of longer range 60 GHz devices in wireless applications without causing harmful interference to authorized radio services in this band or disrupting the operations of other unlicensed devices, including indoor WPAN systems that currently use this band. The Commission believes that this change in the rules will enhance the value of the 60 GHz band as a vehicle for delivering broadband, particularly the high-capacity backhaul required for 4G wireless services. This approach will afford 4G and other broadband providers greater operational flexibility at lower cost by allowing them to use unlicensed devices for backhaul, reserving licensed spectrum for other uses, thereby promoting spectrum efficiency. Because existing outdoor point-to-point 60 GHz devices are restricted to much lower emission limits, these changes to our rules would provide tangible benefits, including to small businesses and consumers, without additional regulatory costs.

9. In the *NPRM,* the Commission tentatively concluded that several factors will offset any increase in the interference potential between equipment with very high gain antennas and other devices in the 60 GHz band. The Commission noted that: (1) The very high gain antennas used would be highly directional, reducing the probability that a low power, omnidirectional system would be located within its beamwidth; (2) low power devices will operate primarily indoors because of their shorter range, whereas very high gain directional systems will primarily be located outdoors because of their longer transmission range, thus the emissions from directional systems, as seen by lower power indoor devices, will be attenuated significantly from intervening objects, such as building walls; and (3) oxygen and water vapor absorption and scattering should further reduce ranges at which the radiated emissions from 60 GHz equipment with very high-gain antennas could cause interference.

10. The Commission is not persuaded by the opposing commenters from the indoor networking industry that our preliminary view is incorrect. The Commission finds that the high propagation losses in the 60 GHz band combined with the pencil beam of the high-gain antennas substantially mitigate the interference potential of these devices. These devices must be very accurately pointed to a very precise location in order to operate effectively. As the antenna gain increases, the beamwidth of the antenna becomes narrower, making it less likely that these devices will cause interference to nearby receivers unless they are located directly in the path of this pencil-thin antenna beam. In this regard, the Commission observes that in order to keep a link with a high gain antenna operating, the transmitter and receiver must be aligned using a special alignment tool, so that the likelihood of inadvertent transmission through such a window is remote. Because of the highly directional nature of 60 GHz point-to-point communications, if the link were misaligned and the transmitter's signals would be mistakenly directed toward a receiver other than its intended receiver, the communication link itself would be broken (transmission terminated) and realignment would be required to reestablish the link.

11. Additional factors further discount the likelihood of harmful

interference, as suggested by the Institute of Electrical and Electronics Engineers (IEEE) 802.18 Radio Technical Advisory Group (IEEE RR–TAG), from an outdoor high-power remotely-mounted transmitter (*e.g.,* mounted on the roof of an adjacent building, on a balcony, or under a roof overhang) that may inadvertently transmit radiation into the window of a room where a WPAN receiver may be operating. One is the geographic separation between higher power point-to-point outdoor installations and low-power indoor WPAN networks. This factor is significant because of the very short range associated with 60 GHz devices (touted as a benefit by manufacturers of both outdoor and indoor consumer products in light of its security advantages). IEEE RR–TAG also fails to address the effects of attenuation. Even if a small portion of the emission from a high gain outdoor antenna were to enter into a room through a window, that low-level emission would first be attenuated by the glass, before being further attenuated by other objects in the room, thus minimizing its potential interference effect significantly. For all these reasons, and absent any record evidence to the contrary, it is our predictive judgment that the proposed change as limited to outdoor devices would not result in harmful interference, which is defined not to protect against isolated occurrences, but only against interference that ''seriously degrades, obstructs, or repeatedly interrupts'' a radio communication service.

12. The Commission also decline to adopt the IEEE RR–TAG's recommendations for measuring nearby buildings' perimeter power density and for adopting an automatic transmit power control to limit the maximum power at the receiver end of a point-to-point link. The Commission finds such requirements unnecessary for co-existence between indoor and outdoor unlicensed devices in this band because of the high signal propagation losses at these frequencies and the highly narrow beamwidth of the outdoor devices; furthermore, the IEEE RR–TAG did not support its recommendations with any specific interference data. In response to IEEE RR–TAG comments, Motorola recommends that, absent more specific data and justification, the Commission simply limit use to the minimum power necessary to complete the link in accordance with good engineering principles and require that all point-to-point devices have the ability to adjust power output downward. The Commission agrees with Motorola that it should not require the IEEE-recommended limitations without more data and justification. However, the Commission finds that the power at an individual location can be adjusted by antenna selection therefore, it is not necessary to require that the ability to adjust power output be built into the transmitter, which would add cost without countervailing benefit. The Commission also notes that both the 60 GHz outdoor and indoor equipment are unlicensed devices that do not have priority rights to the spectrum over one another; however, the geographical separation of the two types of equipment will eliminate any potential of harmful interference.

13. Finally, the Commission observes that since the adoption of the *NPRM,* there has been ample time for Space Frequency Coordination Group (SFCG) to conduct its studies regarding the Earth Exploration Satellite Service (EESS). Further, the Commission does not maintain the specific data on 60 GHz devices as requested by SFCG, other than the information submitted in the device certification applications, which can be accessed through our public equipment authorization database. In addition, the Commission agrees with Motorola that the potential for interference to EESS is sufficiently low such that the need for additional study does not warrant a delay in our decision. The Commission finds that the high-gain antennas with very narrow beam widths employed by 60 GHz devices operating under the new higher EIRP limits, combined with the atmospheric attenuation and severe propagation losses at these frequencies will limit any potential for interference to EESS and that sharing of this service with 60 GHz devices at higher EIRP limits will not be a cause for concern.

**Antenna Substitution**

14. Section 15.204(c)(4) of the rules allows intentional radiators to be marketed and used with any antenna that is of the same type and of equal or less directional gain as the antenna authorized with the equipment. Manufacturers must provide a list of acceptable antenna types with an application for equipment authorization, and the Commission does not require retesting of a system configuration that uses an antenna that is the same type and with equal or less directional gain than the one it authorizes.

15. The Commission concludes that 60 GHz devices that will operate outdoors under the higher EIRP limits it is adopting herein should be authorized for operation using only the specific antenna(s) with which the system will be marketed and operated. In particular, as proposed in the *NPRM,* the Commission will require that compliance testing be performed using the highest gain and the lowest gain antennas for which certification is being sought, rather than testing only the highest gain antenna for each antenna type as permitted by § 15.204(c). The Commission finds that testing of both highest and lowest gain antennas is necessary given that our rules will allow the EIRP to vary relative to the antenna gain, thus ensuring compliance with our emission and RF exposure limits. It will continue to require, as also proposed in the *NPRM,* that compliance testing be performed with the 60 GHz intentional radiator operated at its maximum available output power level and that the applicant for equipment certification provides a list of acceptable antennas with its application. Accordingly, the Commission is amending § 15.255(b)(1)(ii) to specify the above antenna requirements for the higher power 60 GHz transmitters. Because 60 GHz devices are already required to be tested for compliance with all the types of antennas that are intended to be used with the equipment and to submit the worst-case results in the application for certification, the additional regulatory cost of providing information on an additional test result already required to be performed by our rules is not significant.

**Spurious Emissions**

16. Spurious emissions are those emissions on a frequency outside the necessary bandwidth, the level of which may be reduced without affecting the transmission of information. Section 15.255(c)(3) requires that 60 GHz equipment spurious emissions between 40 GHz and 200 GHz be limited to 90 pW/cm$^2$ at a distance of 3 meters, which is equivalent to an EIRP level of −10 dBm. In the *NPRM,* the Commission proposed to retain the existing limits on spurious emissions but clarified in the proposed rule § 15.255(c)(3) that measurements must be made in the far field and that if the far field distance is greater than 3 meters, then the measurement results would need to be extrapolated to a distance of 3 meters according to § 15.31(f)(1).

17. The Commission declined to adopt the clarification proposed in the *NPRM* with regard to the measurement distance with respect to spurious emissions. In the *NPRM,* the Commission proposed to express this limit alternatively as EIRP to be consistent with the measurement unit proposed for main-beam fundamental

emissions. BridgeWave's comments clearly indicate a presumption that the Commission has somehow proposed to modify the spurious emission limits, which was never intended. The Commission therefore finds that it would be less confusing to maintain the existing spurious emission rule with the limit expressed in power density units, rather than EIRP, and it will make no changes to § 15.255(c)(3).

18. With respect to BridgeWave's request for an increase in spurious emission limit, the Commission notes that it is not making any changes to the spurious emission limit. Thus, it finds that the concerns expressed by BridgeWave about increased filtering requirements are not warranted, and likewise there is no reason for us to consider increasing the spurious emission limits as BridgeWave suggests.

19. With regard to the radio astronomy service and National Radio Astronomy Observatory (NRAO) concerns, the Commission observed at the outset that, although the *NPRM* proposed to increase the average EIRP power limit, it proposed to limit peak emission levels, and also ''to retain the existing limits on spurious emissions and peak transmitter output power.'' The Commission's intention here was to seek comment on a proposal to maintain the appropriate power limit itself (*i.e.,* in the case of spurious emissions, the existing 90 pW/cm² limit), not on whether to extend that limit to additional frequency bands or to limit the frequency range of operations for 60 GHz devices. Thus, the Commission does not believe it is appropriate to take either of these actions here. In any event, however, the Commission notes that because it has not increased the spurious emission limit or reduced the frequency range of measurements (presently 200 GHz) for 60 GHz devices, there is no higher risk of interference from spurious emissions than that which is presently allowed. Moreover, spurious and harmonic emissions typically roll off (*i.e.,* reduce in amplitude) the further they are in frequency from the fundamental emission. Thus, harmonic emissions at the fourth harmonic—produced by the fundamental frequencies at 56.5–57.88 GHz and arising in the RAS band at 226–231.5 GHz—would be expected to be significantly lower than those already deemed to be acceptable at the third harmonic of these fundamental frequencies which are constrained by the present measurement cutoff. Similarly, spurious emissions generated by these devices at the 226–231.5 GHz frequencies in the RAS band would not be expected to be greater than those below 200 GHz (the top of the specified range). Further, while there is considerable difference in the atmospheric attenuation between 60 GHz and 231.5 GHz as claimed by NRAO, the difference in atmospheric attenuation between 200 GHz and 231.5 GHz is not significant and thus would not affect our conclusion. In fact, nearly all of the RAS allocations for which NRAO expresses concern were made before the implementation of unlicensed devices in § 15.255 of our rules, and unlicensed 60 GHz devices have been successfully sharing spectrum with RAS without causing harmful interference. Further, NRAO provides no information or specific analysis of potential harmful interference from 60 GHz devices to radio astronomy service.

20. Consistent with this experience, the Commission finds that interference to Radio Astronomy Service (RAS) stations is unlikely. First, RAS receivers discriminate against off-axis signals. Second, such receivers are typically located in rural areas, not the urban areas where outdoor point-to-point 60 GHz devices are likely to be found. Third, the severe propagation losses of RF signals in the 60 GHz band due to oxygen absorption and atmospheric conditions, and the highly focused and directional emissions of 60 GHz devices limit any potential for interference from fundamental emissions to RAS such that the Commission does not believe that sharing of this service with 60 GHz devices at higher EIRP levels is a cause for concern. It also does not find that the effect of harmonic and other spurious emissions from 60 GHz devices warrants an extension of the upper frequency band placed on spurious emissions of 60 GHz devices, because as we discussed, the difference in atmospheric attenuation between 200 GHz and 231.5 GHz is not significant enough to affect the acceptable level of emissions from both spurious and harmonic emissions ensured by operation of our existing rules. In addition, as noted, the Commission finds that NRAO's request to exclude part 15 operations from the entire 57–58 GHz band is outside of the scope of this proceeding. As for NRAO's request for a geographical separation zone around specific RAS sites, the Commission notes that in permitting the 57–64 GHz band to be used for unlicensed operations, it has already taken into account the 182–185 GHz RAS band, when it adopted the present spurious emission limit, and the Commission is keeping this limit the same, even though it allows higher fundamental emission limits, thereby providing the same protection to RAS frequencies as if the fundamental levels are unchanged from existing rules. The Commission therefore denies NRAO's request.

**Transmitter ID**

21. Section 15.255(i) of the rules requires that 60 GHz unlicensed emissions that emanate inside a building include a transmitter ID in order to permit users experiencing interference from indoor wireless local area network (LAN) devices to more accurately identify the source of the interference; this transmitter ID must indicate the manufacturer and type of each unit of equipment. This requirement does not apply to devices with transmitting antennas located outdoors. In the *NPRM,* the Commission proposed to eliminate the transmitter ID requirement for any indoor devices whose emissions are directed outdoors, *e.g.,* through a window. The Commission stated that any interference potential likely will be localized around a window link, and it is more likely that any 60 GHz emissions that are reflected from the glass in a window link will be attenuated by the walls and other surrounding objects and will not impact operations in adjacent areas. The Commission also sought comment on whether the transmitter ID requirement should be eliminated for all 60 GHz systems, as the proximity of indoor co-located equipment should allow the user to identify the interfering transmitter to other indoor devices without having to use this feature.

22. The Commission is modifying the rules to eliminate the transmitter ID requirement for all 60 GHz devices. Cisco has urged the Commission to consider the work of multiple standards bodies in its deliberations. The Commission observes that since the release of the *NPRM,* industry standards have been adopted for indoor 60 GHz WPAN devices which provide more efficient and cost-effective interference avoidance techniques, such as channelization, carrier sense multiple access with collision avoidance (CSMA/CA), beacon frames, etc. These techniques are similar to those implemented by wireless networking products operating in the crowded region of 2.4 GHz or 5.8 GHz frequencies where WPAN devices must co-exist with other WPAN devices as well. The Commission finds that, with these technological advances, co-existence between these 60 GHz devices is better resolved by voluntary standards than by a transmitter identification requirement. Except for Cisco's concern (which also reflects questions about higher power indoor devices that the

Commission has declined to permit), the record in this proceeding provides no support for retaining this requirement. The Commission's decision to limit higher power EIRP transmitters to outdoor applications and the factors in our assessment of the interference potential from window links above should alleviate Cisco's and the WPAN industry's concerns, while elimination of the transmitter ID requirement for all 60 GHz devices will lower costs for all 60 GHz devices, including WPAN devices. The Commission therefore finds that it is unnecessary to maintain a requirement that can add costs to equipment design and installation without any demonstrated countervailing benefit. Accordingly, the Commission amended its rules to eliminate the transmitter ID requirements for all 60 GHz devices.

**Final Regulatory Flexibility Analysis**

23. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) in ET Docket No. 07–113.[2] The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

24. The Report and Order amends the regulations for outdoor 60 GHz radio frequency devices that do not require a license to permit an increase in the allowable emitted signal level for systems using very high gain directional antennas; to allow the emissions from all 60 GHz systems to be measured as an equivalent isotropically radiated power (EIRP); and to eliminate the need for all 60 GHz systems to emit a transmitter ID signal. The new rules for higher emission limits will promote longer communication ranges for unlicensed outdoor point-to-point 60 GHz broadband digital systems and thereby extend the ability of such systems to supply very high speed broadband service to office buildings and other commercial facilities, promoting broader deployment of point-to-point digital systems in this band. These longer range systems also could have significant benefits for economic development and job growth by providing additional competition in the broadband market and lowering cost for broadband access to small business owners, enabling the operation of communications systems in support of 4th generation (4G) wireless and furthering the Commission's objectives to bring broadband access to every American. In addition, amending the rules to permit the emission limit for any 60 GHz device to be specified as an EIRP conducted power level would promote repeatability of measurement data, facilitating compliance measurements and saving costs for entities making products that must comply with our rules. Further, eliminating the requirement for transmitter identification (transmitter ID) for all 60 GHz equipment would enable the development of lower cost indoor systems in this band. The rule changes in this Report and Order therefore will provide needed flexibility and cost savings for unlicensed devices to support broadband service in the 60 GHz band.

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

25. There were no public comments filed that specifically addressed the rules and policies proposed in the IRFA.

*C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

26. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

*D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply*

27. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets may additional criteria established by the Small Business Administration (SBA).[5]

28. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration.[6] As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.[7] Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[8] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[9] Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[10] Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.[11] We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.''[12] Thus, we estimate that

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 60–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), Public Law. 104–121, Title II, 110 Stat. 857 (1996), and the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (2010).

[2] *See In the Matter of Revision of the Commission's Rules Regarding Operation in the 57–64 GHz Band,* ET Docket 07–113, *Notice of Proposed Rulemaking* (NPRM), 22 FCC Rcd 10505 (2007).

[3] *See* 5 U.S.C. 603(b)(3).

[4] *Id.* 601(3).

[5] *Id.* 632.

[6] *See* 5 U.S.C. 601(3)–(6).

[7] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (last visited Aug. 31, 2012).

[8] 5 U.S.C. 601(4).

[9] *Independent Sector, The New Nonprofit Almanac & Desk Reference* (2010).

[10] 5 U.S.C. 601(5).

[11] U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

[12] The 2007 U.S Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that

most governmental jurisdictions are small.

29. The adopted rules pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [13] The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees.[14] According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees.[15] Thus, under this size standard, the majority of firms can be considered small.

*E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

30. The Report and Order contains a non-substantial modification to the information collection requirements. The rules adopted in this Report and Order will apply to small businesses that choose to use, manufacture, design, import, or sell part 15 60 GHz devices. There is no requirement, however, for any entity to use, market, or produce these types of products. Small businesses are already subject to the existing rules with regard to reporting, recordkeeping and other compliance requirements related to 60 GHz devices. The rules adopted in this Report and Order do not add substantial additional compliance burden on small businesses.

*F. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

31. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[16]

32. In this Report and Order, we modify our rules for outdoor 60 GHz radio frequency devices that do not require a license to permit an increase in the allowable emitted signal level for systems using very high gain directional antennas; to allow the emissions from all 60 GHz systems to be measured as an equivalent isotropically radiated power (EIRP); and to eliminate the need for all 60 GHz systems to emit a transmitter ID signal. The new rules for higher emission limits will promote longer communication ranges for unlicensed point-to-point 60 GHz broadband digital systems and thereby extend the ability of such systems to supply very high speed broadband service to office buildings and other commercial facilities, promoting broader deployment of point-to-point digital systems in this band. These longer range devices and services could also have significant benefits for economic development and for consumers and businesses by providing additional competition in the broadband market, lowering costs of broadband access to small businesses without increasing the potential for harmful interference. In addition, amending the rules to permit the emission limit for any 60 GHz device to be specified as an EIRP conducted power level would promote repeatability of measurement data, facilitating compliance measurements and saving costs for large and small entities making products that must comply with our rules. Further, the elimination of the transmitter identification requirement would lower cost and benefit small businesses and consumers of all 60 GHz devices, thereby promoting cost savings without imposing additional regulatory burden.

*G. Report to Congress*

33. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[17] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[18]

**Ordering Clauses**

34. Pursuant to the authority contained in Sections 4(i), 301, 302, 303(e) and 303(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302a, 303(e) and 303(f), this Report and Order is hereby *adopted* and part 15 of the Commission's rules *are amended* as set forth in the final rules, effective October 30, 2013.

**Congressional Review Act**

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

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

*Report to Congress*

37. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[19] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.[20]

**List of Subjects in 47 CFR Parts 2 and 15**

Communications equipment.

there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011—U.S. Census Bureau, available at *http://www.census.gov/popest/data/cities/totals/2011/index.html.* If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

[13] U.S. Census Bureau, 2007 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/naics/2007/def/ND334220.HTM#N334220.*

[14] 13 CFR 121.201, NAICS code 334220.

[15] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[16] 5 U.S.C. 603(c).

[17] *See* 5 U.S.C. 801(a)(1)(A).

[18] *See* 5 U.S.C. 604(b).

[19] *See* 5 U.S.C. 801(a)(1)(A).

[20] *See* 5 U.S.C. 604(b).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 15 to read as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.1033 is amended by revising paragraph (b)(11) to read as follows:

### § 2.1033 Application for certification.

* * * * *

(b) * * *

(11) Applications for certification of transmitters operating within the 59.0–64.0 GHz band under part 15 of this chapter shall also be accompanied by an exhibit demonstrating compliance with the provisions of § 15.255(g) of this chapter.

* * * * *

## PART 15—RADIO FREQUENCY DEVICES

■ 3. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544A and 549.

■ 4. Section 15.204 is amended by revising the introductory text in paragraph (c) to read as follows:

### § 15.204 External radio frequency power amplifiers and antenna modifications.

* * * * *

(c) An intentional radiator may be operated only with the antenna with which it is authorized. If an antenna is marketed with the intentional radiator, it shall be of a type which is authorized with the intentional radiator. An intentional radiator may be authorized with multiple antenna types. Exceptions to the following provisions, if any, are noted in the rule section under which the transmitter operates, *e.g.,* § 15.255(b)(1)(ii) of this part.

* * * * *

■ 5. Section 15.255 is amended by revising paragraphs (b), (e), and (f) and removing paragraph (i) to read as follows:

### § 15.255 Operation within the band 57–64 GHz.

* * * * *

(b) Within the 57–64 GHz band, emission levels shall not exceed the following equivalent isotropically radiated power (EIRP):

(1) Products other than fixed field disturbance sensors shall comply with one of the following emission limits, as measured during the transmit interval:

(i) Except as indicated in paragraph (b)(1)(ii) of this section, the average power of any emission shall not exceed 40 dBm and the peak power of any emission shall not exceed 43 dBm.

(ii) For transmitters located outdoors, the average power of any emission shall not exceed 82 dBm minus 2 dB for every dB that the antenna gain is less than 51 dBi. The peak power of any emission shall not exceed 85 dBm minus 2 dB for every dB that the antenna gain is less than 51 dBi. The provisions of § 15.204(c)(2) and (c)(4) of this part that permit the use of different antennas of the same type and of equal or less directional gain do not apply to intentional radiator systems operating under this provision. In lieu thereof, intentional radiator systems shall be certified using the specific antenna(s) with which the system will be marketed and operated. Compliance testing shall be performed using the highest gain and the lowest gain antennas for which certification is sought and with the intentional radiator operated at its maximum available output power level. The responsible party, as defined in § 2.909 of this chapter, shall supply a list of acceptable antennas with the application for certification.

(2) For fixed field disturbance sensors that occupy 500 MHz or less of bandwidth and that are contained wholly within the frequency band 61.0–61.5 GHz, the average power of any emission, measured during the transmit interval, shall not exceed 40 dBm, and the peak power of any emission shall not exceed 43 dBm. In addition, the average power of any emission outside of the 61.0–61.5 GHz band, measured during the transmit interval, but still within the 57–64 GHz band, shall not exceed 10 dBm, and the peak power of any emission shall not exceed 13 dBm.

(3) For fixed field disturbance sensors other than those operating under the provisions of paragraph (b)(2) of this section, the peak transmitter conducted output power shall not exceed −10 dBm and the peak EIRP level shall not exceed 10 dBm.

(4) The peak power shall be measured with an RF detector that has a detection bandwidth that encompasses the 57–64 GHz band and has a video bandwidth of at least 10 MHz. The average emission levels shall be calculated based on the measured peak levels, over the actual time period during which transmission occurs. Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance.

* * * * *

(e) Except as specified paragraph (e)(1) of this section, the peak transmitter conducted output power shall not exceed 500 mW. Depending on the gain of the antenna, it may be necessary to operate the intentional radiator using a lower peak transmitter output power in order to comply with the EIRP limits specified in paragraph (b) of this section.

(1) Transmitters with an emission bandwidth of less than 100 MHz must limit their peak transmitter conducted output power to the product of 500 mW times their emission bandwidth divided by 100 MHz. For the purposes of this paragraph, emission bandwidth is defined as the instantaneous frequency range occupied by a steady state radiated signal with modulation, outside which the radiated power spectral density never exceeds 6 dB below the maximum radiated power spectral density in the band, as measured with a 100 kHz resolution bandwidth spectrum analyzer. The center frequency must be stationary during the measurement interval, even if not stationary during normal operation (e.g., for frequency hopping devices).

(2) Peak transmitter conducted output power shall be measured with an RF detector that has a detection bandwidth that encompasses the 57–64 GHz band and that has a video bandwidth of at least 10 MHz. Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance.

(3) For purposes of demonstrating compliance with this paragraph, corrections to the transmitter conducted output power may be made due to the antenna and circuit loss.

* * * * *

(f) *Frequency stability.* Fundamental emissions must be contained within the frequency bands specified in this section during all conditions of operation. Equipment is presumed to operate over the temperature range −20 to +50 degrees Celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

* * * * *

[FR Doc. 2013–23263 Filed 9–27–13; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 203 and 252**

**RIN 0750–AH97**

# Defense Federal Acquisition Regulation Supplement: Enhancement of Contractor Employee Whistleblower Protections (DFARS Case 2013–D010)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement statutory amendments to whistleblower protections for contractor and subcontractor employees.

**DATES:** *Effective date:* September 30, 2013. In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in these rules in major modifications to contracts and orders awarded prior to the effective date of this interim rule.

*Comment Date:* Comments on the interim rule should be submitted in writing to the address shown below on or before November 29, 2013, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2013–D010, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D010'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D010.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D010'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2013–D010 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6098; facsimile 571–372–6101.''

**SUPPLEMENTARY INFORMATION:**

## I. Background

This interim rule revises the DFARS to implement section 827 (except paragraph (g)) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). Section 827 (Enhancement of Whistleblower Protections for Contractor Employees) made extensive changes to 10 U.S.C. 2409, entitled ''Contractor employees: Protection from reprisal or disclosure.'' Paragraph (g) of section 827, which amended paragraph (k) of 10 U.S.C. 2324, entitled ''Allowable costs under defense contracts,'' is partially addressed under a separate DFARS case, 2013–D022, Allowability of Legal Costs for Whistleblower Proceedings.

Section 827 of the NDAA for FY 2013 created a standalone statute for DoD that is not dependent on the Federal Acquisition Regulation (FAR) coverage. The DoD contractor whistleblower rules are based on an independent statute that applies only to Title 10 agencies. Section 828, Pilot Program for Enhancement of Contractor Whistleblower Protections, of the NDAA for FY 2013 will be implemented in the FAR; see FAR Case 2013–015. Section 828 establishes a four-year ''pilot program'' to provide enhanced whistleblower protections for employees of civilian agency contractors and subcontractors and suspend the use of FAR 3.901 through 3.906. The FAR will also incorporate sections 827(g) and 828(d) of the NDAA for FY 2013 (Pub. L. 112–239).

Section 827(g) amends 10 U.S.C. 2324(k). In a like manner, section 828(d) amends 41 U.S.C. 4310 to address legal costs incurred by a contractor in connection with a proceeding commenced by a contractor employee submitting a complaint under the applicable whistleblower section (10 U.S.C. 2409 or 41 U.S.C. 4712, respectively). See FAR Case 2013–017, entitled Allowability of Legal Costs for Whistleblower Proceedings.

## II. Discussion and Analysis

The current FAR addresses this subject at subpart 3.9, and the DoD-unique rules are contained in DFARS subpart 203.9, entitled ''Whistleblower Protections for Contractor Employees.'' DFARS subpart 203.9 implements 10 U.S.C. 2409, as amended. The subpart covers the policy, procedures for filing and investigating complaints, remedies, and the prescription for the clause at DFARS 252.203–7002, entitled ''Requirement to Inform Employees of Whistleblower Rights.''

### *A. Section 827 Changes to 10 U.S.C. 2409*

Section 827 revised 10 U.S.C. 2409 as follows:

(a)(1): Amended grounds for disclosure.

(a)(2): Amended persons and bodies to whom disclosure may be made and for which reprisal is prohibited.

(a)(3)(A): Provided a definition of who is deemed to have made a disclosure, see 203.903(3).

(a)(3)(B): Added prohibition against reprisal even if undertaken at the request of a DoD or Administration official.

(b)(1): Provided an additional basis on which the Inspector General may determine not to investigate.

(b)(2)(B): Provided a reporting timeframe for any additional period for investigation.

(b)(3): Provided specific exemptions to the prohibition against disclosure of information from or about any person alleging the reprisal.

(b)(4): Added a three-year time limit for bringing a complaint.

(c)(1)(B): Modified the types of damages that may be ordered.

(c)(2): Created a two-year time limit for bringing an action if remedies have been denied or after remedies are deemed to have been exhausted.

(c)(4): Expanded on the types of relief that may be granted when a person fails to comply with an order for relief.

(c)(5): Clarified that filing an appeal generally may not be grounds for staying enforcement of the order.

(c)(6): Stated the legal burden of proof to be used.

(c)(7): Prohibited any waiver of the rights and remedies in the statute.

(d): Added a new requirement to notify employees of their rights and remedies.

(e): Created an exemption for elements of the intelligence community.

(g)(6): Added a definition of ''abuse of authority.''

### *B. Changes to DFARS*

The statutory changes to 10 U.S.C. 2409 made by section 827 are

implemented in DFARS subpart 203.9. The statutory changes to 10 U.S.C. 2324(k) made by section 827 are being implemented separately.

The interim rule amends DFARS 203.900, Scope of subpart, to add a reference to section 827 and implement the exclusion of the intelligence community from applicability of the subpart. The definition of ''abuse of authority'' is added to DFARS 203.901, Definition.

Amendments are made to DFARS 203.903, Policy. The applicability of the subpart is expanded to include violations of rule or regulation and abuse of authority relating to a DoD contract. The entities covered are expanded to include other law enforcement agencies, a court or grand jury, and certain contractor or subcontractor management officials or employees. In addition, the changes to this section include a clarification of what constitutes a ''disclosure.''

DFARS 203.904 is revised to add the specific procedures for filing complaints from FAR 3.904. DFARS 203.905 is amended to address specific reasons for which the DoD Inspector General would be justified in not investigating a complaint of discrimination or reprisal, add timelines, and clarify the narrow circumstances under which the DoD Inspector General could respond to any inquiry or disclose information about alleged reprisal.

The remedies at DFARS 203.906 are amended to prohibit reprisal, add a time limit for bringing an action, and state that the rights and remedies provided in DFARS subpart 203.9 cannot be waived. Paragraph (h) of section 827 provides that nothing in the new law may be construed to provide any rights to disclose classified information not otherwise provided by law. This important caveat is included in a new section 203.907, entitled ''Classified information.''

The clause prescribed at DFARS 203.970 is 252.203–7002, Requirement to Inform Employees of Whistleblower Rights. The interim rule amends the clause to apply to subcontractors the specific requirement to inform employees in writing of their whistleblower rights. In addition, the written notification of employee whistleblower rights and protections is required in the predominant native language of the workforce.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule neither changes the substance of contract or solicitation procedures or policies nor creates a whistleblower protection for contractor employees. Such protections currently exist, and this case only clarifies contractors' rights and the remedies available to their employees. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is amending the DFARS to implement changes to the existing protections for contractor whistleblower employees as a result of amendments made by section 827 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013. Section 827 of the NDAA for FY 2013 amended 10 U.S.C. 2409 and 10 U.S.C. 2324(k). Section 827 changes are applicable to DoD, NASA, and the Coast Guard. Each agency will amend its Federal Acquisition Regulation supplement to incorporate these provisions. This Initial Regulatory Flexibility Analysis pertains only to this DFARS interim rule. This rule makes revisions to subpart 203.9, ''Whistleblower Protections for Contractor Employees.'' The subpart covers the policy, procedures for filing and investigating complaints, remedies, and the prescription for the clause at DFARS 252.203–7002, entitled ''Requirement to Inform Employees of Whistleblower Rights.''

The rule applies to all entities, small as well as large, at the prime contract and subcontract level. However, not all entities will have a situation occur that requires an employee to use the whistleblower provisions. Given that a whistleblower employee may work for any size business, the impact on small businesses is directly associated with the number of whistleblowers it employs. There is no way to predict this number in advance. However, a small entity could be impacted by a whistleblower employee either as a Government prime contractor or subcontractor. In addition, the impact on an entity is directly related to the seriousness of the alleged wrongdoing.

There are no reporting requirements associated with reporting of the wrongdoing as stated in the interim rule. A firm accused of retaliating against an employee whistleblower is likely to be required to furnish human resources documentation to disprove the accusation. This documentation, however, would only be required in the course of an investigation of the accusation, not as a result of a contract clause.

The rule does not duplicate, overlap, or conflict with any other Federal rules. Because of the terms used in the statute, DoD is unable to create alternatives, such as exempting small entities or establishing a dollar threshold for coverage. Regardless of the size of the business, a whistleblower employee must be protected from retaliation by his/her employer.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013–D010), in correspondence.

## V. Paperwork Reduction Act

The rule does not contain any information collection additional requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## VI. Determination To Issue an Interim Rule

A determination has been made by the Secretary of Defense pursuant to 41 U.S.C. 1701(d) that urgent and compelling reasons exist to justify promulgating this rule on an interim basis without prior opportunity for public comment. This action is necessary for the following reasons: First, by operation of law, the revised statute became effective on July 1, 2013 (*i.e.,* Congress included language in section 827 specifically addressing the effective date of the changes to 10 U.S.C. 2409). Second, the revisions impose new responsibilities on agencies and create certain new rights for contractor

employees. Specifically, as of July 1, 2013:

• There are changes and additions in the list of entities to whom a whistleblower disclosure makes the whistleblower eligible for additional protections against reprisal;

• Agency heads have expanded responsibilities to take specific actions with regard to a DoD Inspector General finding of reprisal against a contractor whistleblower:

• The law requires that the written notice to employees of their whistleblower rights must be provided in the ''predominant native language of the workforce;'' and

• For the first time, contractors must flow down to subcontractors the requirement to provide written notice to subcontractor employees.

In addition, there is a new exemption for elements of the intelligence community that was not available under previous laws.

The most effective and efficient way to ensure awareness and compliance by agencies and contractors with all of these requirements is through immediate regulatory change. Delaying promulgation may delay the effective date of regulations but will not postpone when the law becomes applicable to contractors and subcontractors. Thus, ordinary notice and comment procedures would unnecessarily increase the risk of confusion and noncompliance, defeating the regulatory objective.

Moreover, there is little likelihood that the publication of this rule without prior comment will increase burden on contractors. This interim regulation qualifies as an interpretative rule, as it provides basic guidance that agencies and contractors need to comply with the statute. Indeed, this regulation prescribes little beyond that which is set forth clearly in the statute.

Nevertheless, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the Department's final rule.

**List of Subjects in 48 CFR Parts 203 and 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 203 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Section 203.900 is revised to read as follows:

### 203.900 Scope of subpart.

(a) This subpart implements 10 U.S.C. 2409 as amended by section 846 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), section 842 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), and section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

(b) This subpart does not apply to any element of the intelligence community, as defined in 50 U.S.C. 3003(4). This subpart does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(1) Relates to an activity or an element of the intelligence community; or

(2) Was discovered during contract or subcontract services provided to an element of the intelligence community.

■ 3. Section 203.901 is added to read as follows:

### 203.901 Definition.

*Abuse of authority,* as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of DoD or the successful performance of a DoD contract.

■ 4. Section 203.903 is revised to read as follows:

### 203.903 Policy.

(1) *Policy.* 10 U.S.C. 2409 prohibits contractors or subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (2) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract). Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(2) Entities to whom disclosure may be made:

(i) A Member of Congress or a representative of a committee of Congress.

(ii) An Inspector General that receives funding from or has oversight over contracts awarded for or on behalf of DoD.

(iii) The Government Accountability Office.

(iv) A DoD employee responsible for contract oversight or management.

(v) An authorized official of the Department of Justice or other law enforcement agency.

(vi) A court or grand jury.

(vii) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(3) *Disclosure clarified.* An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a DoD contract shall be deemed to have made a disclosure.

(4) *Contracting officer actions.* A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

■ 5. Section 203.904 is revised to read as follows:

### 203.904 Procedures for filing complaints.

(a) Any employee of a contractor or subcontractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 203.903 may file a complaint with the Inspector General of the Department of Defense.

(b) A complaint may not be brought under this section more than three years after the date on which the alleged reprisal took place.

(c) The complaint shall be signed and shall contain—

(1) The name of the contractor;

(2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(3) The violation of law, rule, or regulation giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act, including the party to whom the information was disclosed; and

(5) The specific nature and date of the reprisal.

■ 6. Section 203.905 is amended by—

■ a. Removing the introductory text;

■ b. Revising paragraphs (1) and (3); and

■ c. Adding paragraphs (4) and (5).

The revision and addition read as follows:

**203.905 Procedures for investigating complaints.**

(1) Unless the DoD Inspector General makes a determination that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the DoD Inspector General will investigate the complaint.

* * * * *

(3) Upon completion of the investigation, the DoD Inspector General—

(i) Either will determine that the complaint is frivolous, fails to allege a violation of the prohibition in 203.903, or has been previously addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, or will submit the report addressed in paragraph (2) of this section within 180 days after receiving the complaint; and

(ii) If unable to submit a report within 180 days, will submit the report within the additional time period, up to 180 days, as agreed to by the person submitting the complaint.

(4) The DoD Inspector General may not respond to any inquiry or disclose any information from or about any person alleging the reprisal, except to the extent that such response or disclosure is—

(i) Made with the consent of the person alleging reprisal;

(ii) Made in accordance with 5 U.S.C. 552a (the Freedom of Information Act) or as required by any other applicable Federal law; or

(iii) Necessary to conduct an investigation of the alleged reprisal.

(5) The legal burden of proof specified at paragraph (e) of 5 U.S.C. 1221 (Individual Right of Action in Certain Reprisal Cases) shall be controlling for the purposes of an investigation conducted by the DoD Inspector General, decision by the head of an agency, or judicial or administrative proceeding to determine whether prohibited discrimination has occurred.

■ 7. Section 203.906 is amended by—

■ a. Revising paragraph (1);

■ b. Amending paragraph (2)(ii) by adding a sentence at the end of the paragraph; and

■ c. By adding paragraphs (4), (5), and (6).

The revision and additions read as follows:

**203.906 Remedies.**

(1) Not later than 30 days after receiving a DoD Inspector General report in accordance with 203.905, the head of the agency shall determine whether sufficient basis exists to conclude that the contractor has subjected the complainant to a reprisal as prohibited by 203.903; and shall either issue an order denying relief or shall take one or more of the following actions:

(i) Order the contractor to take affirmative action to abate the reprisal.

(ii) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) * * *

(ii) * * * An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

* * * * *

(4) Whenever a contractor fails to comply with an order issued by the head of agency in accordance with 10 U.S.C. 2409, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and reasonable attorney fees and costs. The person upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(5) Any person adversely affected or aggrieved by an order issued by the head of the agency in accordance with 10 U.S.C. 2409 may obtain judicial review of the order's conformance with the law, and the implementing regulation, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, Unites States Code. Filing such an appeal shall not act to stay the enforcement of the order by the head of an agency, unless a stay is specifically entered by the court.

(6) The rights and remedies provided for in this subpart may not be waived by any agreement, policy, form, or condition of employment.

■ 8. Section 203.907 is added to read as follows.

**203.907 Classified information.**

As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this coverage provides any rights to disclose classified information not otherwise provided by law.

## 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Section 252.203–7002 is amended by—

■ a. Amending the clause date by removing ''(JAN 2009)'' and adding in its place ''(SEP 2013)'';

■ b. Designating the clause text as paragraph (a);

■ c. Revising the newly designated paragraph (a); and

■ d. Adding a new paragraph (b).

The revision and addition read as follows:

**252.203–7002 Requirement to Inform Employees of Whistleblower Rights.**

* * * * *

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

(End of clause)

[FR Doc. 2013–23768 Filed 9–27–13; 8:45 am]

BILLING CODE 5001–06–P

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 206, 212, 225, and 252

**RIN 0750–AH98**

### Defense Federal Acquisition Regulation Supplement: Acquisitions in Support of Operations in Afghanistan (DFARS Case 2013–D009)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement two sections of the National Defense Authorization Act for Fiscal Year 2013 that require compliance with domestic source restrictions in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms, and eliminate the application of the enhanced authority to acquire products and services from Iraq.

**DATES:** *Effective Date:* September 30, 2013.

*Comment Date:* Comments on the interim rule should be submitted in writing to the address shown below on or before November 29, 2013, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2013–D009, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D009'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D009.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D009'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2013–D009 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106; facsimile 571–372–6089.

**SUPPLEMENTARY INFORMATION:**

## I. Background

This interim rule revises the DFARS to implement sections 826 and 842 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239).

Section 826 requires compliance with 10 U.S.C. 2533a (the Berry Amendment) in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms. The law further states that no exception or exemptions under that section shall apply.

Section 842 modifies section 886 of the NDAA for FY 2008 (Pub. L. 110–181), which provided enhanced authority to acquire products and services from Iraq and Afghanistan in support of operations in Iraq or Afghanistan. Section 842 eliminates application of the enhanced authority to acquisition of products and services from Iraq.

## II. Discussion and Analysis

### *A. Revisions to DFARS Subpart 225.77 and Associated Provisions and Clauses*

This interim rule amends the scope of subpart 225.77 to reflect implementation of sections 826 and 842 of the National Defense Authorization Act for FY 2013 (Pub. L. 112–239).

1. Section 842

This interim rule amends the title of subpart 225.77 to apply only to operations in Afghanistan, and deletes application of the policies and procedures of that subpart to products and services from Iraq.

At 225.7702 (now redesignated 225.7702–1), DoD has deleted the references to the Army of Iraq, the Iraqi Police Forces, and other Iraqi security organizations. Although there was no change to section 892 of the NDAA for FY 2008, Competition for Procurement of Small Arms Supplied to Iraq and Afghanistan, there is no longer a need for this coverage relating to Iraq in the DFARS. DoD does not buy small arms for any of these Iraqi organizations and the enhanced authority to buy items in support of operations in Iraq no longer exists.

This interim rule deletes the reporting requirements at section 225.7703–4 (and redesignates 225.7703–5 as 225.7703–4). The statutory requirement to report on acquisitions using the methods in this section expired at the end of FY 2009.

With regard to associated provisions and clauses, DoD has deleted Alternate I of DFARS 252.225–7021, Trade Agreements; and DFARS 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, because this clause and provision were only necessary to allow the acquisition of Iraqi end products when trade agreements applied to the acquisition.

DFARS 252.225–7023, Preference for Products or Services from Iraq or Afghanistan; DFARS 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan; and DFARS 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, have been modified to delete enhanced authority relating to acquisitions of products or services from of Iraq.

2. Section 826

This interim rule adds a new section at 225.7702–2 to state the requirement that any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purpose of production of uniforms shall be produced in the United States.

DFARS 225.7703–4(d) prescribes the use of a new clause at DFARS 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, in solicitations and contracts for the acquisition of any textile components that DoD intends to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms.

The new clause at DFARS 252.225–7029 defines ''textile component'' to mean any item consisting of fibers, yarns, or fabric, supplied for incorporation into a uniform or a component of a uniform. It does not include items that do not contain fibers, yarns, or fabric, such as the metallic or plastic elements of buttons, zippers, or other clothing fasteners. There is a cross-reference to this definition added at DFARS 225.7701.

The clause also states that there are no exceptions or waivers to the requirement that the contractor shall deliver under this contract only textile components that have been produced in the United States.

### *B. Other Conforming Changes*

In addition to the changes in DFARS subpart 225.77 and the associated provisions and clauses, conforming changes were also required at DFARS 206.303–70, 212.301, 225.401, 225.502, 225.1101, 225.7501, and the clause prefaces of 252.225–7032, 252.225–7033, 252.225–7035, and 252.225–7036.

**III. Applicability to Acquisition of Commercial Items and Acquisitions Not Greater Than the Simplified Acquisition Threshold**

Section 826 states that 10 U.S.C. 2533a shall apply, and no exceptions or exemptions under that section shall apply. 10 U.S.C. 2533a (the Berry Amendment) specifically states in paragraph (i) that the statute is applicable to contracts and subcontracts for the procurement of commercial items, notwithstanding section 1906 of title 41. It does not specifically mention 41 U.S.C. 1907, which addresses applicability to commercially available off-the-shelf (COTS) items. However, most of the items restricted by the Berry Amendment are COTS items, and the application of the Berry Amendment in the DFARS has not included any exception for COTS items. Although paragraph (h) of the Berry Amendment provides an exception for purchases in amounts not greater than the simplified acquisition threshold, section 826 requires application to acquisitions not greater than the simplified acquisition threshold, because it states that none of the Berry Amendment exceptions apply.

**IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**V. Regulatory Flexibility Act**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This initial regulatory flexibility analysis has been prepared consistent with 5 U.S.C. 603. This rule implements sections 826 and 842 of the National Defense Authorization Act for FY 2013 (Pub. L. 112–239).

The objective of the rule is to (1) require compliance with domestic source restrictions in the case of any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purposes of production of uniforms, and (2) eliminate the application of the enhanced authority to acquire products and services from Iraq. The legal basis is the above-cited statutes.

The number of small entities to be affected by the rule is not known. The rule has the potential to impact entities that manufacture textile components, if purchased by DoD to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms. Any impact is expected to be beneficial, because it will require purchase from a domestic source.

There are no projected reporting, recordkeeping, or other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD was unable to identify any significant alternatives consistent with the stated objectives of the statute. DoD does not anticipate any significant economic impact on small entities. Any impact is expected to be beneficial.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013–D009), in correspondence.

**V. Paperwork Reduction Act**

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0229, entitled Defense Federal Acquisition Regulation Supplement; Part 225 and Related Clauses (Total approved burden hours—57,135).

**VI. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because sections 826 and 842 of the NDAA for FY 2013 were effective upon enactment (January 2, 2013). If implementation is delayed—

- Contracting officers may be unaware that the existing exceptions to the Berry Amendment no longer apply in the case of DoD purchase of textile components to be supplied to the Afghan National Army or the Afghan National Police for purpose of production of uniforms. This may result in purchases of foreign textile components in violation of the law.
- Contracting officers may erroneously provide a preference for the products or services of Iraq, without statutory authority. This will detract from the efforts to appropriately use the enhanced authority to acquire products and services from Afghanistan and the Central Asian states in support of operations in Afghanistan.

The Commander, United States Central Command (USCENTCOM), has advised that procuring products or services from the Central Asian states to meet Operation ENDURING FREEDOM requirements is critical to U.S. efforts to gain access and permissions for supporting current and future operations in, to, and from Afghanistan. USCENTCOM also advises that procurements in the Central Asian states support the USCENTCOM Theater Campaign Plan and International Security Assistance Force Civil Military Campaign Plan, as well as long-term economic development and stability in the region.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 206, 212, 225, and 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 206, 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 206, 212, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

## PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.303–70 is amended by revising the section heading the section heading to read as follows:

**206.303–70 Acquisitions in support of operations in Afghanistan.**

* * * * *

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.301 is amended by—
■ a. Revising paragraph (f)(xxvi);
■ b. Removing paragraph (f)(xxvii) and redesignating paragraphs (f)(xxviii) through (xxxii) as paragraphs (xxvii) through (xxxi);
■ c. Revising newly redesignated paragraphs (f)(xxvii) through (xxix);
■ d. Adding a new paragraph (f)(xxxii); and
■ e. Revising paragraphs (f)(xxxiv) and (xxxv).

The revisions and addition are as follows:

**212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) * * *

(xxvi) Use the clause at 252.225–7021, Trade Agreements to comply with 19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note.

(A) Use the basic clause as prescribed in 225.1101(6)(i).

(B) Use the clause with its Alternate II as prescribed in 225.1101(6)(ii).

(xxvii) Use the provision at 252.225–7023, Preference for Products or Services from Afghanistan, as prescribed in 225.7703–4(a), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxviii) Use the clause at 252.225–7024, Requirement for Products or Services from Afghanistan, as prescribed in 225.7703–4(b), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxix) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Afghanistan, as prescribed in 225.7703–4(c), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

* * * * *

(xxxii) Use the clause at 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in 225.7703–4(d).

* * * * *

(xxxiv) Use the provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(A) Use the basic provision as prescribed in 225.1101(9)(i).

(B) Use the provision with its Alternate I as prescribed in 225.1101(9)(ii).

(C) Use the provision with its Alternate II as prescribed in 225.1101(9)(iii).

(D) Use the provision with its Alternate III as prescribed in 225.1101(9)(iv).

(E) Use the provision with its Alternate IV as prescribed in 225.1101(9)(v).

(F) Use the provision with its Alternate V as prescribed in 225.1101(9)(vi).

(xxxv) Use the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(A) Use the basic clause as prescribed in 225.1101(10)(i)(A).

(B) Use the clause with its Alternate I as prescribed in 225.1101(10)(i)(B).

(C) Use the clause with its Alternate II as prescribed in 225.1101(10)(i)(A).

(D) Use the clause with its Alternate III as prescribed in 225.1101(10)(i)(B).

(E) Use the clause with its Alternate IV as prescribed in 225.1101(10)(i)(C).

(F) Use the clause with its Alternate V as prescribed in 225.1101(10)(i)(C).

* * * * *

## PART 225—FOREIGN ACQUISITION

■ 4. Section 225.401–71 is revised as follows:

**225.401–71 Products or services in support of operations in Afghanistan.**

When acquiring products or services, other than small arms, in support of operations in Afghanistan, if using a procedure specified in 225.7703–1(a)(2) or (3), the procedures of subpart 25.4 are not applicable.

**225.502 [Amended]**

■ 5. Section 225.502(c)(iv) is amended by removing the words ''Iraq or''.

**225.1101 [Amended]**

■ 6. Section 225.1101 is amended by—
■ a. Removing in paragraph (5)(i) the phrase ''Except as provided in paragraph (7) of this section, use'' and adding in its place ''Use'';
■ b. Removing paragraph (6)(ii) and redesignating paragraphs (6) (iii) through (v) as paragraphs (6)(ii) through (iv);
■ c. In redesignated paragraph (6)(ii), removing the phrase ''and Alternate I is not applicable'';
■ d. In redesignated paragraph (6)(iii)(B), removing the words ''Iraq or'';
■ e. Removing paragraph (7) and redesignating paragraphs (8) through (11) as paragraphs (7) through (10).
■ f. In redesignated paragraph (10)(i), removing the phrase ''paragraph (11)(ii)'' and adding in its place ''paragraph (10)(ii)''.

**225.7501 [Amended]**

■ 6. Section 225.7501(a)(5) is amended by removing the words ''Iraq or''.

## Subpart 225.77 Acquisitions in Support of Operations in Afghanistan

■ 7. Subpart 225.77 heading is revised to read as set forth above.

■ 8. Section 225.7700 is revised to read as follows:

**225.7700 Scope.**

This subpart implements—

(a) Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181);

(b) Section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), as amended by section 842 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239);

(c) Section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239); and

(d) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisitions in support of operations in Afghanistan.

■ 9. Section 225.7701 is revised to read as follows:

**225.7701 Definitions.**

As used in this subpart—

*Product from Afghanistan* means a product that is mined, produced, or manufactured in Afghanistan.

*Service from Afghanistan* means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

*Small arms* means pistols and other weapons less than 0.50 caliber.

*Source from Afghanistan* means a source that—

(1) Is located in Afghanistan; and

(2) Offers products or services from Afghanistan.

*Textile component* is defined in the clause at 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police.

**225.7702 [Redesignated as 225.7702–1]**

■ 10a. Redesignate section 225.7702 as 225.7702–1.

■ 10b. Add a new section 225.7702 heading to read as follows:

**225.7702 Acquisitions not subject to the enhanced authority to acquire products or services from Afghanistan.**

**225.7702–1 [Amended]**

■ 10c. In redesignated section 225.7702–1(a), remove the phrases ''the Army of Iraq,'', ''the Iraqi Police Forces,'' and ''Iraqi or''.

■ 10d. Add a new section 225.7702–2 to read as follows:

**225.7702–2 Acquisition of uniform components for the Afghan military or the Afghan police.**

Any textile components supplied by DoD to the Afghan National Army or the Afghan National Police for purpose of production of uniforms shall be produced in the United States.

■ 11. Section 225.7703 heading is revised to read as follows:

**225.7703 Enhanced authority to acquire products or services from Afghanistan.**

**225.7703–1 [Amended]**

■ 12. Section 225.7703–1 is amended—

■ a. In paragraph (a) introductory text by adding the phrase ''except as provided in 225.7702,'' after ''225.7703–2,'', removing the phrases '', other than small arms,'' and ''Iraq or'', and removing the comma after ''Afghanistan'';

■ b. In paragraph (a)(1) by removing the words ''Iraq or'';

■ c. In paragraph (a)(2) by removing the words ''Iraq or''; and

■ d. In paragraph (a)(3) by removing the words ''Iraq or''.

**225.7703–2 [Amended]**

■ 13. Section 225.7703–2 is amended—

■ a. In paragraph (a) introductory text by removing the words ''Iraq or'';

■ b. In paragraph (a)(1) by removing the words ''Iraq or'';

■ c. In paragraph (b) introductory text by removing the words ''Iraq or'';

■ d. In paragraph (b)(1)(i) by removing the words ''Iraq or'';

■ e. In paragraph (b)(1)(ii)(A) by removing the words ''Iraq or''; and

■ f. By revising paragraph (b)(2)(ii)(E) to read as follows:

**25.7703–2 Determination requirements.**

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(E) Commander of the United States Central Command Joint Theater Support Contracting Command (C–JTSCC).

* * * * *

■ 14. Section 225.7703–3 is revised as follows:

**225.7703–3 Evaluating offers.**

Evaluate offers submitted in response to solicitations that include the provision at 252.225–7023, Preference for Products or Services from Afghanistan, as follows:

(a) If the low offer is an offer of a product or service from Afghanistan, award on that offer.

(b) If there are no offers of a product or service from Afghanistan, award on the low offer.

(c) Otherwise, apply the evaluation factor specified in the solicitation to the low offer.

(1) If the price of the low offer of a product or service from Afghanistan is less than the evaluated price of the low offer, award on the low offer of a product or service from Afghanistan.

(2) If the evaluated price of the low offer remains less than the low offer of a product or service from Afghanistan, award on the low offer.

(d) For acquisitions in support of USCENTCOM, see PGI 225.7703–3.

**225.7703–4 [Removed]**

■ 15a. Section 225.7703–4 is removed.

■ 15b. Section 225.7703–5 is redesignated as 225.7703–4 and revised as follows:

**225.7703–4 Solicitation provisions and contract clauses.**

(a) Use the provision at 252.225–7023, Preference for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that provide a preference for products or services from Afghanistan in accordance with 225.7703–1(a)(1). The contracting officer may modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at 252.225–7024, Requirement for Products or Services from Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the provision at 252.225–7023, Preference for Products or Services from Afghanistan, and in the resulting contract.

(c) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Afghanistan, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(1) Are restricted to the acquisition of products or services from Afghanistan in accordance with 225.7703–1(a)(2); or

(2) Will be directed to a particular source or sources from Afghanistan in accordance with 225.7703–1(a)(3).

(d) Use the clause at 252.225–7029, Acquisition of Uniform Components for Afghan Military or Afghan National Police, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of any textile components that DoD intends to supply to the Afghan National Army or the Afghan National Police for purposes of production of uniforms.

(e) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101 (5) and (6).

(f) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at 252.225–7023, the clause at 252.225–7024, or the clause at 252.225–7026:

(1) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(2) 252.225–7001, Buy American Act and Balance of Payments Program.

(3) 252.225–7002, Qualifying Country Sources as Subcontractors.

(4) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(5) 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(6) 252.225–7044, Balance of Payments Program—Construction Material.

(7) 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements.

(g) Do not use the following clause or provision in solicitations or contracts that include the clause at 252.225–7026:

(1) 252.225–7020, Trade Agreements Certificate.

(2) 252.225–7021, Trade Agreements.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.225–7021 [Amended]**

■ 16. Section 252.225–7021 is amended—

■ a. By removing and reserving Alternate I; and

■ b. In Alternate II, by removing in the introductory text ''225.1101(6)(iii)'' and adding in its place ''225.1101(6)(ii)''.

**252.225–7022 [Removed and Reserved]**

■ 17. Section 252.225–7022 is removed and reserved.

■ 18. Section 252.225–7023 is revised to read as follows:

**252.225–7023 Preference for Products or Services from Afghanistan.**

As prescribed in 225.7703-*4*(a), use the following provision:

**Preference for Products or Services From Afghanistan (SEP 2013)**

(a) *Definitions.* ''Product from Afghanistan'' and ''service from Afghanistan,'' as used in this provision, are defined in the clause of this solicitation entitled ''Requirement for Products or Services from Afghanistan'' (DFARS 252.225–7024).

(b) *Representation.* The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Afghanistan or services from Afghanistan, except those listed in—

(1) Paragraph (c) of this provision; or

(2) Paragraph (c)(2) of the provision entitled ''Trade Agreements Certificate,'' if included in this solicitation.

(c) *Other products or services.* The following offered products or services are not products from Afghanistan or services from Afghanistan:

(*Line Item Number*) (*Country of Origin*)

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by 50 percent the prices of offers of products or services that are not products or services from Afghanistan.

(End of provision)

■ 19. Section 252.225–7024 is revised to read as follows:

**252.225–7024 Requirement for Products or Services from Afghanistan.**

As prescribed in 225.7703-*4*(b), use the following clause:

**Requirement for Products or Services From Afghanistan (SEP 2013)**

(a) *Definitions.* As used in this clause—

(1) ''Product from Afghanistan'' means a product that is mined, produced, or manufactured in Afghanistan.

(2) ''Service from Afghanistan'' means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract, unless, in its offer, it specified that it would provide products or services other than products from Afghanistan or services from Afghanistan.

(End of clause)

■ 20. Section 252.225–7026 is revised to read as follows:

**252.225–7026 Acquisition Restricted to Products or Services from Afghanistan.**

As prescribed in 225.7703-*4*(c), use the following clause:

**Acquisition Restricted to Products or Services From Afghanistan (SEP 2013)**

(a) *Definitions.* As used in this clause—

(1) ''Product from Afghanistan'' means a product that is mined, produced, or manufactured in Afghanistan.

(2) ''Service from Afghanistan'' means a service including construction that is performed in Afghanistan predominantly by citizens or permanent resident aliens of Afghanistan.

(b) The Contractor shall provide only products from Afghanistan or services from Afghanistan under this contract.

(End of clause)

■ 21. Section 252.225–7029 is added to read as follows:

**252.225–7029 Acquisition of Uniform Components for Afghan Military or Afghan National Police.**

As prescribed in 225.7703–4(d), use the following clause:

**Acquisition of Uniform Components for the Afghan Military or the Afghan National Police (SEP 2013)**

(a) *Definitions.* As used in this clause—

''Textile component'' means any item consisting of fibers, yarns, or fabric, supplied for incorporation into a uniform or a component of a uniform. It does not include items that do not contain fibers, yarns, or fabric, such as the metallic or plastic elements of buttons, zippers, or other clothing fasteners.

''United States'' means the 50 States, the District of Columbia, and outlying areas.

(b) As required by section 826 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), the Contractor shall deliver under this contract only textile components that have been produced in the United States.

(c) There are no exceptions or waivers to this requirement.

(End of clause)

**252.225–7032 [Amended]**

■ 22. In section 252.225–7032, the introductory text is amended by removing ''225.1101(8)'' and adding in its place ''225.1101(7)''.

**252.225–7033 [Amended]**

■ 23. In section 252.225–7033, the introductory text is amended by removing ''225.1101(9)'' and adding in its place ''225.1101(8)''.

**252.225–7035 [Amended]**

■ 24. Section 252.225–7035 is amended by—

■ a. Removing ''225.1101(10)(i)'' in the introductory text and adding in its place ''225.1101(9)(i)'';

■ b. In Alternate I, removing ''225.1101(10)(ii)'' in the introductory text and adding in its place ''225.1101(9)(ii)'';

■ c. In Alternate II, removing ''225.1101(10)(iii)'' in the introductory text and adding in its place ''225.1101(9)(iii)'';

■ d. In Alternate III, removing ''225.1101(10)(iv)'' in the introductory text and adding in its place ''225.1101(9)(iv)'';

■ e. In Alternate IV, removing ''225.1101(10)(v)'' in the introductory text and adding in its place ''225.1101(9)(v)''; and

■ f. In Alternate V, removing ''225.1101(10)(vi)'' in the introductory text and adding in its place ''225.1101(9)(vi)''.

**252.225–7036 [Amended]**

■ 25. Section 252.225–7036 is amended by—

■ a. Removing ''225.1101(11)(i)(A)'' in the introductory text and adding in its place ''225.1101(10)(i)(A)'';

■ b. In Alternate I, removing ''225.1101(11)(i)(B)'' in the introductory text and adding in its place ''225.1101(10)(i)(B)'';

■ c. In Alternate II, removing ''225.1101(11)(i)(A)'' in the introductory text and adding in its place ''225.1101(10)(i)(A)'';

■ d. In Alternate III, removing ''225.1101(11)(i)(B)'' in the introductory text and adding in its place ''225.1101(10)(i)(B)'';

■ e. In Alternate IV, removing ''225.1101(11)(i)(C)'' in the introductory text and adding in its place ''225.1101(10)(i)(C)''; and

■ f. In Alternate V, removing ''225.1101(11)(i)(C)'' in the introductory text and adding in its place ''225.1101(10)(i)(C)''.

[FR Doc. 2013–23743 Filed 9–27–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 216 and 252

**RIN 0750–AI04**

### Defense Federal Acquisition Regulation Supplement: Allowability of Legal Costs for Whistleblower Proceedings (DFARS Case 2013–D022)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2013 that amends the allowability of legal costs incurred by a contractor related to whistleblower proceedings.

**DATES:** *Effective date:* September 30, 2013

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before November 29, 2013, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2013–D022, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2013–D022'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2013–D022.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2013–D022'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2013–D022 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106; facsimile 571–372–6094.

**SUPPLEMENTARY INFORMATION:**

## I. Background

This interim rule revises DFARS subparts 216.3 and adds a new clause at 252.216 to implement paragraphs (g) and (i) of section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239).

## II. Discussion and Analysis

The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112–239, enacted January 2, 2013) established enhanced whistleblower protections for contractor and subcontractor employees in separate, but parallel, sections of the NDAA for titles 10 and 41 agencies, respectively. Title 10 agencies are required by the terms of section 827(i)(2) to revise their respective FAR supplements. These enhanced whistleblower protections and the associated cost principle changes are being implemented by two DFARS cases (for DoD only) and two FAR cases (for title 41 agencies), which are independent, but parallel, rulemakings because of some minor differences in the operations of the underlying statutes and because the title 41 statute is only a four-year pilot program.

Paragraph 827(g) addresses the allowability of legal costs incurred by a contractor related to whistleblower proceedings.

Paragraph 827(i)(1) specifies that the amendments made by section 827 are applicable to—

- Contracts awarded on or after the effective date;
- Task orders entered into on or after the effective date, pursuant to contracts awarded before, on, or after such date; and
- Contracts awarded before the effective date, which are modified to include a contract clause providing for the applicability of such amendments.

Paragraph 827(i)(3) requires that at the time of any major modification to a contract that was awarded before the effective date, the head of the contracting agency shall make best efforts to include in the contract a clause providing for the applicability to the contract of the amendments made by section 827.

DoD has added a new clause at DFARS 252.216–7009, Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding, as prescribed at DFARS 216.307(a). This clause is necessary to make the revised whistleblower cost principle applicable to any task orders issued against contracts awarded prior to the effective date of this regulation and any contracts modified to implement section 827. Otherwise, unless the terms of the contract state otherwise, FAR clause 52.216–7, Allowable Cost and Payment, states in paragraph (a) that costs are determined to be allowable in accordance with FAR subpart 31.2 in effect on the date of the contract award.

DFARS Case 2013–D010 will address the paragraphs of section 827 that provide enhancements of whistleblower protections for contractor employees, including revisions to 10 U.S.C. 2409.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because most contracts awarded to small entities are awarded on a competitive fixed-price basis, and do not require application of the cost principles contained in this rule. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The reason for the action is to implement paragraphs 827(g) and (i) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). Section 827(g) expands the cost principle at 10 U.S.C. 2324(k) to apply the cost principle on allowability of costs related to legal and other proceedings to costs incurred by contractors in proceedings commenced by a contractor employee submitting a complaint under 10 U.S.C. 2409 (whistleblowing), and include as specifically unallowable, legal costs of a proceeding that results in an order to take corrective action under 10 U.S.C. 2409. The legal basis for the rule is 10 U.S.C. 2324(k).

Most contracts awarded on a fixed-price competitive basis do not require application of the cost principles. The majority of contracts valued at or below the simplified acquisition threshold are awarded on a fixed price competitive basis. Requiring submission of certified cost or pricing data for acquisitions that do not exceed the simplified acquisition threshold is prohibited (FAR 15.403–4(a)(2). According to the Federal

Procurement Data System data for Fiscal Year (FY) 2012, there were 48,115 new DoD contract awards over the simplified acquisition threshold in FY 2012. Of those contracts, only 6,760 awards were to small businesses on other than a competitive fixed-price basis. Estimating 3 awards per small business, that could involve about 2,600 small businesses. However, this rule would only affect a contractor if a contractor employee commenced a proceeding by submitting a complaint under 10 U.S.C. 2409, and if that proceeding resulted in imposition of a monetary penalty or an order to take corrective action under 10 U.S.C. 2409. We do not have data on the percentage of contracts that involve submission of a whistleblower complaint and result in monetary penalty or an order to take corrective action.

There are no projected reporting, recordkeeping, or other compliance requirements of this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD was unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the statute.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2013–D022), in correspondence.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**VI. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. By operation of law, the new statute for the whistleblower protection became effective on July 1, 2013, i.e., Congress included language in section 827(i) specifically addressing the effective date of the revisions to 10 U.S.C. 2409 and 10 U.S.C. 2324. Section 827(g), which is implemented through this rulemaking, addresses the contractor's legal fees arising from an employee's complaint of reprisal and makes these fees expressly unallowable costs when there is contractor culpability. The most effective and efficient way to ensure awareness and compliance by the DoD and its contractors with section 827(g) is through the issuance of an interim rule. This regulation requires nothing beyond that which is set forth clearly in the statute. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 216 and 252**

Government procurement.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

## PART 216—TYPES OF CONTRACTS

■ 2. Add section 216.307 to subpart 216.3 to read as follows:

**216.307 Contract clauses.**

(a) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), use the clause at 252.216–7009, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—

(1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216–7, Allowable Cost and Payment; and

(2) In contracts awarded before September 30, 2013, that—

(i) Include the clause at FAR 52.216–7, Allowable Cost and Payment; and

(ii) Are modified to include the clause at DFARS 252.203–7002, Requirement to Inform Employees of Whistleblower Rights, dated September 2013 or later.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Add section 252.216–7009 to read as follows:

**252.216–7009 Allowability of legal costs incurred in connection with a whistleblower proceeding.**

As prescribed in 216.307(a), use the following clause:

**Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding (SEP 2013)**

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112–239), notwithstanding FAR clause 52.216–7, Allowable Cost and Payment—

(1) The restrictions of FAR 31.205–47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 2409, entitled ''Contractor employees: protection from reprisal for disclosure of certain information;'' and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 2409 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 2409.

(End of clause)

[FR Doc. 2013–23764 Filed 9–27–13; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF VETERANS AFFAIRS

## 48 CFR Part 819

**RIN 2900–AM92**

## VA Acquisition Regulation: Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status Protests

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its adjudication procedures for Service-Disabled Veteran-Owned Small Businesses (SDVOSB) and Veteran-Owned Small Businesses (VOSB) status protests, to provide that VA's Director, Center for Veterans Enterprise (CVE), shall initially adjudicate SDVOSB and VOSB status protests, and to provide that protested businesses, if they are denied status, may appeal to VA's Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU). Additionally, VA amends the title of CVE from the Center for Veterans Enterprise to the Center for Verification and Evaluation, to more appropriately represent the function of this office.

**DATES:** *Effective Date:* This interim final rule is effective September 30, 2013.

*Comment Date:* Comments must be received on or before November 29, 2013.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont

Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AM92–VA Acquisition Regulation: Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status Protests.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System at *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Cheryl Duckett-Moody, Senior Procurement Analysis (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–5319. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** In a final rule with request for comments published in the **Federal Register** on December 8, 2009 (74 FR 64619), VA revised 48 CFR parts 802, 804, 808, 809, 810, 813, 815, 817, 819, 828, and 852 to implement portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 and Executive Order 13360, which provide opportunities for SDVOSBs and VOSBs to increase their Federal contracting and subcontracting. VA solicited comments on an interim provision included in the final rule, which amended regulations governing SDVOSB and VOSB status protests to provide that the U.S. Small Business Administration (SBA) would be utilized to consider and decide VA SDVOSB and VOSB status protests. This required VA and SBA to execute an interagency agreement pursuant to the Economy Act (31 U.S.C. 1535). Because negotiations of the interagency agreement had not been finalized at the time the final rule was published, the interim provision included in the final rule provided that VA's Executive Director, OSDBU, would consider and decide SDVOSB and VOSB status protests. This interim provision was necessary because, without an SDVOSB/VOSB status protest resolution process in place for acquisitions under this authority, performance of any contract award that was challenged would have been suspended and would have deprived VA and Veterans of necessary services and/or supplies.

Since the issuance of the final rule with request for comments, VA has reconsidered reaching an interagency agreement with SBA to review and decide status protests and subsequently determined that SDVOSB and VOSB status protest adjudication shall remain within VA. Therefore, VA is issuing this interim final rule to remove from VA Acquisition Regulation (VAAR) 819.307(a) (or 48 CFR 819.307(a)) references to an interagency agreement between VA and SBA to handle SDVOSB and VOSB status protests outside VA. Moreover, in the first sentence of paragraph (a), the word ''eligible'' is removed as the use of this term is premature because the Director or Executive Director could find the SDVOSB or VOSB ineligible as a result of the status protest. Additionally, we reorganized VAAR 819.307 for ease of readability and clarity.

This revised decision is based on the unique statutory requirements that VA must meet pursuant to the SDVOSB/VOSB set-aside acquisition authority at 38 U.S.C. 8127 and 8128. For example, VA's statutory authority has an exception where surviving spouses of certain service-disabled Veterans may remain qualified as owners of SDVOSBs, which is not present in the government-wide SDVOSB set-aside authority program at 15 U.S.C. 657f. In contrast, SBA adjudicates only SDVOSB status protests pursuant to the separate Government-wide SDVOSB set-aside authority. Moreover, VA has developed expertise over the last 2 years in adjudicating SDVOSB and VOSB verification examinations and status protests. VA's current interim SDVOSB and VOSB status protest processes and procedures have mainly proved effective, and VA now has the infrastructure and experience to address and resolve future SDVOSB and VOSB status protests. However, VA is revising the current interim process in this interim final rule to provide that VA's Director of CVE shall initially adjudicate SDVOSB and VOSB status protests and to provide that either the protesting party or the protested business may appeal the Director of CVE decision to the Executive Director of OSDBU.

VA provided a 30-day comment period for the interim provision included in the final rule, which ended on January 7, 2010. VA received one comment regarding paragraph (b) of VAAR 819.307, ''SDVOSB/VOSB Small Business Status Protests.'' Under the interim provision included in the final rule, VAAR 819.307(b) provides that, if an SDVOSB/VOSB status protest is sustained after VA has already awarded a contract, VA will proceed with the award but the VA contracting officer cannot count the award as an award to an SDVOSB or VOSB and the concern cannot submit another offer as an SDVOSB or VOSB on a future SDVOSB or VOSB procurement ''unless it demonstrates to VA that it has overcome the reasons for the determination of ineligibility.'' The commenter stated that allowing an award to proceed rather than terminating it following a successful status protest rewards fraudulent actions by letting the award stand; overlooks the lack of diligence by the contracting officer; disregards case law indicating contract awards resulting from fraudulent representation are considered void ab initio, so the contractor forfeits the contract; and ignores that the award of a fraudulently obtained contract set-aside for SDVOSBs and VOSBs is no different than any other Federal contract. The commenter also stated that allowing a fraudulently obtained contract to proceed will discourage companies from submitting protests as there is no recourse for them on a contract they may have won, if the status protest is sustained and the fraudulent contractor becomes ineligible from future procurements. The commenter suggested the following: (1) if a contract is won by submitting fraudulent information, the contract award should be overturned and re-solicited or awarded to the next qualified bidder, and (2) VA should require contracting officers to issue a letter of intent to award, so companies may have the opportunity to protest prior to contract award.

We agree with the commenter and have revised the regulation to add VAAR 819.307(h) to state that when an SDVOSB or VOSB status protest is sustained after the award of a contract, the contract shall be deemed to be void ab initio and the contracting officer shall cancel the contract and award the contract to the next eligible SDVOSB or VOSB in line for the award. Additionally, the ineligible SDVOSB or VOSB firm is precluded from submitting another offer as an SDVOSB or VOSB on a future SDVOSB or VOSB set-aside procurement under VAAR part 819, unless it successfully appeals the determination of the Director, CVE, to the Executive Director, OSDBU, or unless it applies for and receives verified SDVOSB or VOSB status in accordance with 38 CFR part 74.

As to the commenter's second issue, regarding notification of apparently successful offers, this was already addressed previously in current VAAR 819.307(c)(2) and remains in the revised regulation at 819.307(c) where it provides that an interested party must submit its status protest to the contracting officer by close of business

on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Therefore, we make no changes based on this comment.

In promulgating this regulation to establish more detailed SDVOSB and VOSB status protest procedures, VA has largely adopted procedures equivalent to Federal Acquisition Regulation (FAR) 19.306 (or 48 CFR 19.306) associated with protesting a firm's status as a Historically Underutilized Business Zone (HUBZone) small business concern and FAR 19.307 for SDVOSB status protests for the Government-wide SDVOSB set-aside program established by 15 U.S.C. 657f. First, with respect to who may file a VA SDVOSB or VOSB status protest, revised VAAR 819.307(b) provides that either a contracting officer or an interested party may protest the apparently successful offeror's SDVOSB or VOSB status. Further, VA defines ''interested party'' for the purpose of filing a status protest as an actual offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. This is consistent with FAR 19.307(a) except that SBA cannot raise a VA SDVOSB or VOSB status protest since this is a title 38 program.

The regulation further establishes in revised VAAR 819.307(c) that, except for premature status protests, the contracting officer must forward to the Director, CVE, any status protest received. This is because the Director, CVE, subject to appeal to the Executive Director, OSDBU, shall determine the timeliness of a status protest. The contracting officer can determine if a status protest is premature because that means the contracting officer has not yet opened bids or made a decision as to the apparently successful offeror upon which to raise a challenge. This is consistent with FAR 19.307(e). Revised 819.307(c) further provides that any assertions that a protested concern is not an SDVOSB or VOSB concern, without setting forth specific facts or allegations, are insufficient. This is consistent with FAR 19.307(g). A status protest may only raise a challenge to an apparently successful offeror's SDVOSB or VOSB status by disputing the Veteran or service-disabled Veteran status of the individual owner(s) of the concern, or ownership and/or control of the concern by a Veteran or service-disabled Veteran.''

Upon receipt of the status protest, the regulation further provides at new VAAR 819.307(d) that the Director, CVE, will notify the protester and the contracting officer of the date the status protest was received by CVE and whether the status protest will be decided on the merits or dismissed on jurisdictional grounds for lack of timeliness or specificity. This is consistent with FAR 19.307(g) where, for SBA status protests, SBA officials notify the protester and the contracting officer of the receipt of the protest and whether it will be processed or dismissed for lack of timeliness or specificity. If the status protest is decided on the merits, the regulation provides in new 819.307(e) that the Director, CVE, will determine the SDVOSB or VOSB status of the protested concern based on the totality of the circumstances within 21 business days after receipt of the status protest. A totality of the circumstances standard is appropriate because, as the integrity of the SDVOSB/VOSB set-aside program is paramount, this permits the Director, CVE, to consider facts or issues not specifically raised by the protesting party that impact the SDVOSB/VOSB status and compliance with 38 CFR Part 74 of the protested party. If the Director, CVE, does not contact the contracting officer within 21 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted the Director, CVE, an extension. The contracting officer may award the contract after receipt of a status protest if the contracting officer determines in writing that an award must be made to protect the public interest. The contracting officer shall document this determination for the contract file. These provisions are equivalent to those contained in FAR 19.307(h) except to the extent that VA has determined VA requires 21 business days in lieu of 15 business days to decide a status protest based on available agency resources.

The regulation provides at new VAAR 819.307(f) that a decision on the merits by the Director, CVE, that is based on the failure to meet the Veteran or service-disabled Veteran status of the individual owner(s) of the concern as defined in 38 CFR 74.1 is not subject to an appeal to the Executive Director, OSDBU, and is a final decision since Director, CVE exercises no independent discretion with respect to this question. VA's Veterans Benefits Administration (VBA), not OSDBU, is the entity within the Department responsible for determinations of individual Veteran or service-disabled Veteran status. Director, CVE relies exclusively on currently valid individual Veterans' eligibility determinations rendered by VBA or, in some cases, disability determinations of the Department of Defense pursuant to 38 CFR 74.1 (definition service-disabled Veteran)''.

Upon rendering a decision, new VAAR 819.307(g) provides that the Director, CVE, will notify the contracting officer, the protester, and the protested concern of its determination. The decision is effective immediately and is final unless overturned on appeal by the Executive Director, OSDBU. The determination may be sent by mail, commercial carrier, facsimile transmission, or other electronic means. This is consistent with FAR 19.307(i) where, for SBA status protests, SBA officials notify the protester and the contracting officer of the determination and that it is effective immediately and final unless overturned on appeal.

In order to provide an additional layer of due process, new VAAR 819.307(i) provides that, except for a decision based upon an allegation of failure to meet the Veteran or service-disabled Veteran status of the individual owner(s) of the apparently successful offeror, the Director, CVE, status protest decision may be appealed.The protester or the protested SDVOSB or VOSB concern may file an appeal of the status protest determination with the Executive Director, OSDBU. The determination to retain the appeal process within VA OSDBU is a policy determination but it is consistent with the government-wide HUBZone status protest process set forth in FAR 19.306(m) wherein status protests are submitted to SBA's Associate Administrator for the HUBZone Program, who issues initial decisions, and appeals are filed with and determined by SBA's Associate Deputy Administrator for Government Contracting and 8(a) Business Development. Within VA, the Director, CVE, and the Executive Director, OSDBU, are the two most senior officials with the necessary expertise on SDVOSB and VOSB status examinations to make proper determinations.

The Executive Director must receive the appeal no later than 5 business days after the date of receipt of the status protest determination. This is consistent with FAR 19.306(j), with respect to HUBZone status protest appeals. The Executive Director will dismiss any appeal received after the 5-day period. ''Filing'' means a document is received by the Executive Director by 5:30 p.m., Eastern Standard Time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery

and other means of delivery may not be practicable during certain periods due to, for example, security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt by the Executive Director, OSDBU. Appeals are to be submitted to: Executive Director, OSDBU (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

New VAAR 819.307(j) sets forth that any appeal must meet the following criteria. The appeal must be in writing. The appeal must identify the status protest determination being appealed and also must set forth a full and specific statement as to why the decision was based on clear error of fact or law. This is consistent with FAR 19.306(k) with respect to HUBZone status protest appeals and 13 CFR 134.508 with respect to SDVOSB status protest appeals at SBA's Office of Hearing and Appeals.

New VAAR 819.307(k) requires that the party appealing the determination must provide notice of the appeal to the contracting officer. In order to avoid a piecemeal presentation of the relevant issues and frivolous appeals, 819.307(k) also establishes that the Executive Director will decide all appeals solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto. These provisions are consistent with FAR 19.306(l) with respect to HUBZone status protest appeals and 13 CFR 134.512 with respect to SDVOSB status protest appeals at SBA's Office of Hearing and Appeals.

New VAAR 819.307(l) provides that the Executive Director will make a decision on the appeal within 10 business days of the receipt of the appeal, if practicable, and will base the decision only on the information and documentation in the protest record as supplemented by the appeal. The Executive Director will provide a copy of the decision to the contracting officer and the protested SDVOSB or VOSB concern. The Executive Director's decision, if received before the award, will apply to the pending acquisition. If the Executive Director's decision is received after the award, the contracting officer may terminate the contract or not exercise the next option (i.e., the contract will end once the contract term expires). This policy determination weighs the needs of the agency and the public interest against the due process rights of an interested party and is consistent with the government-wide HUBZone status protest process where the Director of HUB issues an initial decision and a higher level SBA official issues the appellate decision and when SBA's Office of Hearing and Appeals issues a decision in an SDVOSB status protest appeal after a contract has been awarded. See FAR 19.306(m); 13 CFR 125.27(g)(2)(iii). If the appeal is decided in favor of the appealing party after the contract is awarded, the contracting officer is given the business discretion to terminate the contract or not exercise the next option because, due to the passage of time, the costs of a termination and disruption of services for the benefit of veterans or a construction project may be so extensive as to outweigh the programmatic issues of ensuring an award is made to a valid veteran small business. The Executive Director's decision is the final decision. The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means. This process is essentially consistent with the method for appeals related to SBA's HUBZone status protest process set forth in FAR 19.306(m) except that VA has determined that VA requires 10 business days in lieu of 5 business days to decide an appeal due to VA's available administrative resources.

Finally, a technical change would re-designate VA's Center for Veterans' Enterprise as the Center for Verification and Evaluation to more accurately reflect the mission of this office which is to determine the status of SDVOSBs and VOSBs with respect to VA's SDVOSB/VOSB set-aside acquisition program established by 38 U.S.C. 8127.

**Administrative Procedure Act**

This document revises VAAR 819.307, ''SDVOSB/VOSB Small Business Status Protests,'' the interim provision included in the final rule on which we requested comments. In the interim provision, VA provided that the Executive Director, OSDBU, shall consider and decide SDVOSB and VOSB status protests until VA and SBA executed an interagency agreement for SBA to consider and decide SDVOSB and VOSB status protests. For the reasons stated above, we have determined that SDVOSB and VOSB status protests shall remain within VA. Therefore, we are revising the interim provision to provide that the Director, CVE, shall initially adjudicate SDVOSB and VOSB status protests and to provide that either the protester or the protested business may appeal the Director, CVE, decision to the Executive Director, OSDBU.

Good cause exists for the agency to include this change in an interim final rule to make a change to the interim provision that is essential for this contracting program to function so as not to deprive VA and veterans of necessary services and supplies and to provide immediately appropriate due process by authorizing an administrative appeal process on initial status protest decisions. The current interim process does not authorize an administrative appeal at the agency level, which has been criticized in *Miles Construction, LLC* v. *United States,* 108 Fed. Cl. 792 (2013), as not providing a party adequate due process and the opportunity to be heard at a meaningful time in a meaningful manner. Thus, delay in the implementation of this rulemaking would be contrary to the public interest. VA hereby solicits comments on this regulatory amendment.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final arbiter of VA SDVOSB and VOSB status protests remains the Executive Director, OSDBU, as previously promulgated. The main change is that the Secretary has determined that SBA should not be involved in VA SDVOSB or VOSB status protests because these status protests are solely associated with title 38 SDVOSB and VOSB set-aside acquisitions where SDVOSB or VOSB status is to be determined by the Secretary pursuant to 38 U.S.C. 8127(f). On this basis, the Secretary certifies that the adoption of this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995, at 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act**

This interim final rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

**Catalog of Federal Domestic Assistance**

There is no Catalog of Federal Domestic Assistance number or title for this program.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on September 13, 2013, for publication.

**List of Subjects in 48 CFR Part 819**

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses, Veterans.

Dated: September 25, 2013.

**Robert C. McFetridge,**

*Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 48 CFR part 819 as follows:

## PART 819—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for part 819 continues to read as follows:

**Authority:** 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); 48 CFR 1.301–1.304; and 15 U.S.C. 637(d)(4)(e).

### Subpart 819.3—Determination of Small Business Status for Small Business Programs

■ 2. Revise 819.307 to read as follows:

**819.307 SDVOSB/VOSB Small Business Status Protests.**

(a) All protests relating to whether a Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) is a ''small'' business for the purposes of any Federal program are subject to 13 CFR part 121 and must be filed in accordance with that part. SDVOSB and VOSB status shall be determined in accordance with 38 CFR part 74.

(b) A contracting officer or an interested party may protest the apparently successful offeror's SDVOSB or VOSB status. ''Interested party'' for the purpose of filing a status protest is an actual offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(c) All status protests shall be in writing and shall state all specific grounds for the protest. Assertions that a protested concern is not an SDVOSB or VOSB concern, without setting forth specific facts or allegations, are insufficient. An interested party must submit its status protest to the contracting officer by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). An interested party must deliver their protest in person, by electronic mail, by facsimile, by express delivery service, or by the U.S. Postal Service within the applicable time period to the contracting officer. Any status protest received after these time limits is untimely. Any status protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester. Except for premature status protests, the contracting officer must forward to the Director, Center for Verification and Evaluation (CVE), any status protest received.

(d) The Director, CVE, will notify the protester and the contracting officer of the date the status protest was received by CVE and whether the status protest will be processed or dismissed for lack of timeliness or specificity.

(e) The Director, CVE, will determine the SDVOSB or VOSB status of the protested concern based upon the totality of circumstances within 21 business days after receipt of the status protest. If the Director, CVE, does not contact the contracting officer within 21 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted the Director, CVE, an extension. The contracting officer may award the contract after receipt of a status protest if the contracting officer determines in writing that an award must be made to protect the public interest. The contracting officer shall document this determination for the contract file.

(f) A denial decision by the Director, CVE, that is based on the failure to meet any service-disabled Veteran or Veteran criterion as defined in 38 CFR 74.1 is not subject to an appeal to the Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU), and is a final decision.

(g) The Director, CVE, will notify the contracting officer, the protester, and the protested concern of its determination. The determination is

effective immediately and is final unless overturned on appeal by the Executive Director, OSDBU. The determination may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

(h) If the Director, CVE, sustains an SDVOSB or VOSB status protest and the contract has already been awarded, then the awarded contract shall be deemed void ab initio and the contracting officer shall rescind the contract and award the contract to the next SDVOSB or VOSB in line for the award. The ineligible SDVOSB or VOSB concern shall not be permitted to submit another offer as a SDVOSB or VOSB on a future SDVOSB or VOSB procurement under this part, unless it successfully appeals the determination of the Director, CVE, to the Executive Director, OSDBU, or unless it applies for and receives verified SDVOSB or VOSB status in accordance with 38 CFR part 74.

(i) Except as provided in subsection (f), the protestor or the protested SDVOSB or VOSB concern may file an appeal of the status protest determination with the Executive Director, OSDBU. The Executive Director must receive the appeal no later than 5 business days after the date of receipt of the status protest determination. The Executive Director will dismiss any appeal received after the 5-day period. ''Filing'' means a document is received by the Executive Director by 5:30 p.m., Eastern Standard Time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due to, for example, security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt by the Executive Director, OSDBU. Submit appeals to: Executive Director, OSDBU (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(j) The appeal must be in writing. The appeal must identify the status protest determination being appealed and must set forth a full and specific statement as to why the decision was based on clear error of fact or law.

(k) The party appealing the determination must provide notice of the appeal to the contracting officer. The Executive Director will decide all appeals under this subpart solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.

(l) The Executive Director will make a decision within 10 business days of the receipt of the appeal, if practicable, and will base the decision only on the information and documentation in the protest record as supplemented by the appeal. The Executive Director will provide a copy of the decision to the contracting officer and the protested SDVOSB or VOSB concern. The Executive Director's decision, if received before the award, will apply to the pending acquisition. If the Executive Director decides in favor of the appealing party and the decision is received after the award, the contracting officer may terminate the contract or not exercise the next option. The Executive Director's decision is the final decision. The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

[FR Doc. 2013–23759 Filed 9–27–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 575

**[Docket No. NHTSA–2013–0076]**

### New Car Assessment Program (NCAP)

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final decision.

**SUMMARY:** This document announces the agency's decision to implement (with minor modifications) the planned update to the U.S. New Car Assessment Program (NCAP) that the agency announced in its June 26, 2013 request for comments (78 FR 38266). As we discussed in that request for comments, this update will enhance the program's ability to recommend to consumers vehicle models that have rearview video systems that the agency believes (based on currently available data) will decrease the risk of backover crashes. Further, the program will no longer list electronic stability control (ESC) as a Recommended Advanced Technology Feature because ESC is now required for all light vehicles. For many years, NCAP has provided comparative information on the safety of new vehicles to assist consumers with vehicle purchasing decisions. NCAP was most recently upgraded for model year 2011 to include recommended crash avoidance technologies. Those updates, along with today's updates to NCAP, allow consumers to better distinguish not only which vehicle models have advanced crash avoidance safety features but also which of these advanced features are best able to help them avoid crashes.

**DATES:** These changes to the New Car Assessment Program are effective September 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Mr. Markus Price, Office of Vehicle Rulemaking, Telephone: 202–366–1810, Facsimile: 202–366–5930, NVS–121. For NCAP logistics: Mr. Clarke Harper, Office of Crash Avoidance Standards, Telephone: 202–366–1810, Facsimile: 202–366–5930, NVS–120.

The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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### I. Executive Summary

This document announces the agency's decision to update the U.S. New Car Assessment Program (NCAP) to include recommendations to motor vehicle consumers on vehicle models that have rearview video systems that can substantially enhance the driver's ability to avoid a backover crash. This update would substitute rearview video systems for electronic stability control (ESC) as a Recommended Advanced Technology Feature on our Web site, *www.safercar.gov*. NCAP provides comparative information on the safety performance and features of new vehicles to assist consumers with their vehicle purchasing decisions.

With some variations, we will implement the plan that was the subject of our June 26, 2013 request for comments.[1] While the agency will remove ESC as a Recommended

[1] 78 FR 38266 (June 26, 2013) (Docket No. NHTSA–2013–0076).

Advanced Technology Feature from NCAP starting in Model Year 2014, the agency will be moving swiftly to incorporate rearview video systems in its place. In order to provide as much information to consumers as quickly as possible, we will be implementing our plan to update NCAP in two phases.

- *Phase 1:* The agency will immediately begin to list rearview video systems in the Safety Features section of *www.safercar.gov* for each vehicle model that has this safety feature available.
- *Phase 2:* As soon as the agency is able to verify that the vehicle model has a rearview video system meeting certain basic criteria (as further discussed below), the agency will recognize those vehicle models as having a Recommended Advanced Technology Feature on the *www.safercar.gov* Web site.

While we have made some modifications to our initial plan for Phase 2 in response to the comments, we believe that the original timing and the three criteria (field of view, image size, and response time) remain appropriate for the purposes of ensuring that rearview video systems that become listed as Recommended Advanced Technology Features on *www.safercar.gov* are designed to assist drivers in avoiding backover crashes. After considering the comments we received, we have clarified our plans for both Phase 1 and 2 in this document and the docketed test procedures that the agency will be using to evaluate rearview video systems for the purposes of Phase 2.[2]

While the agency generally received supportive comments to its plan to update NCAP, various commenters expressed concern over certain details in implementing this plan. Namely, commenters requested clarification on the phased approach that the agency plans to use to implement the change and expressed various concerns over how the agency plans to test rearview video systems to evaluate whether they are systems that can address the safety risk. As discussed further, below, we believe that the issues raised by the commenters can be resolved with some clarification, minor adjustments to the agency's original plan, and the test procedures that the agency is docketing along with this document.[3] Thus, the agency believes that it is appropriate at this time to begin implementing its planned update to NCAP.

Separately, it is important to reiterate the agency's statement in the June 26, 2013 request for comments that the agency's planned update to NCAP is separate from the agency's ongoing efforts to amend FMVSS No. 111 pursuant to the requirements of the Cameron Gulbransen Kids Transportation Safety Act of 2007 (''K.T. Safety Act''). Today's final decision announces the agency's decision with regard to updating NCAP to provide information to consumers about rearview video systems. However, this document is not a resolution to the agency's rulemaking action to amend FMVSS No. 111, it does not replace the agency's efforts in that area, nor is this document an alternative to completing that rulemaking process.

The agency believes that there will be significant advantages in incorporating rearview video systems into NCAP before completing a final rule amending FMVSS No. 111. Also, we believe that NCAP is an important consumer information program that not only educates consumers about the potential benefits of advanced safety technologies, but also supports the provision of these potentially life-saving technologies to the American public. By updating NCAP now, the agency believes that consumers will receive important information relating to the backover risk and manufacturers will receive advance recognition for designing and installing rearview video systems on their vehicles to mitigate that risk. Even after the agency promulgates a final rule to amend FMVSS No. 111, consumers and manufacturers will continue to benefit from this consumer information program during the final rule's phase-in period.[4]

## II. Background

### *A. NCAP and the Recommended Advanced Technology Features*

As stated above, NCAP is a consumer information program that provides comparative information on the safety of new vehicles to assist consumers with vehicle purchasing decisions and to encourage motor vehicle manufacturers to make safety improvements. In the area of crashworthiness safety (how well the vehicle protects occupants in the event of a crash), NCAP uses the 5-Star Safety Rating system to communicate the relative performance of vehicles to consumers. The program was most recently upgraded for model year 2011 to include (among other changes) recommended crash avoidance technologies (technologies that help driver avoid crashes). These changes indicate to consumers which vehicles have Recommended Advanced Technology Features and which do not.

The purpose of recommending to consumers advanced crash avoidance technologies is to provide consumers an easy way for identifying those technologies that data show will address a major safety risk. To this end, the agency uses three prerequisites to determine which technologies it should include as Recommended Advanced Technology Features: (1) It is a technology that addresses a major crash problem; (2) data exists to estimate its potential effectiveness; and (3) tests are available to ensure a level of performance so that the technology will address the safety problem.

As we described in the request for comments, rearview video systems meet these prerequisites that the agency established for determining whether a technology should be considered a Recommended Advanced Technology Feature on *www.safercar.gov* and no commenter provided any information to the contrary. Rearview video systems can address backover crashes, which constitute a major safety problem. Backover crashes cause a significant number of fatalities and injuries each year because drivers cannot see the area behind the vehicle where pedestrians can be located. The currently available information indicates that vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less alone are involved in approximately 210 fatalities and 15,000 injuries per year.[5] Further, the currently available experimental data from the research summarized in the Notice of Proposed Rulemaking (NPRM) to amend FMVSS No. 111 lead the agency to believe that rearview video systems will decrease the risk of backover crashes.[6] Finally, since the agency has developed test procedures to assess rearview video systems to ensure that they are designed so as to address the backover safety risk, we believe that rearview video systems are suitable for incorporation into NCAP as a Recommended Advanced Technology Feature.

[2] Docket No. NHTSA–2013–0076.

[3] Docket No. NHTSA–2013–0076.

[4] The current proposal to amend FMVSS No. 111 included a phase-in period covering three model years. *See* 75 FR 76185, 76188 (December 7, 2010) (Docket No. NHTSA–2010–0162).

[5] This data include the latest information on the target population from the Fatality Analysis Reporting System (FARS) and the General Estimates System (GES). These two sources, in conjunction with the Not in Traffic Surveillance (NiTS) data, form the basis for our estimates of the annual fatalities and injuries that are caused by backover crashes.

[6] 75 FR 76185.

*B. Summary of the June 26, 2013 Request for Comments*

Our request for comments outlined our plan to update NCAP to include rearview video systems. We stated that, in order to accomplish the goal of providing information to consumers as quickly as possible, we would leverage different sections of *www.safercar.gov* and update NCAP in two phases. Currently, the agency provides information on *www.safercar.gov* for each vehicle model concerning the vehicle's 5-Star Safety Ratings, stating whether the vehicle model has a Recommended Advanced Technology Feature, and listing the major safety features available on the vehicle model. Thus, we designed the two-phase implementation approach for rearview video systems as follows:

- *Phase 1:* The agency would immediately begin to list rearview video systems in the Safety Features section for each vehicle model on *www.safercar.gov* that has this safety feature available.
- *Phase 2:* As soon as the agency is able to verify that the vehicle model has a rearview video system meeting certain basic criteria (as further discussed below) the agency would recognize those vehicle models as having a Recommended Advanced Technology Feature on the *www.safercar.gov* Web site.

As stated in our request for comments, this two-phase approach enables the agency to minimize the amount of time needed for the agency to begin providing information to consumers (Phase 1). Further, this approach maximizes the usefulness of the consumer information in the long run by ensuring that the rearview video systems listed as a Recommended Advanced Technology Feature are systems that are designed to address the backover safety problem (Phase 2).

Towards achieving this goal in Phase 2, we outlined three criteria that the agency would use to evaluate rearview video systems for the purposes of listing them as a Recommended Advanced Technology Feature. We stated that to address the backover safety problem, rearview video systems need to (at a minimum):

(1) Show a visual image of a minimum area behind the vehicle that is associated with the greatest crash risk,

(2) show this area at a sufficient size so as to enable the driver to make judgments about the objects behind the vehicle, and

(3) show this area quickly enough to provide the driver with the relevant information before he/she begins the backing maneuver.

To ensure that rearview video systems recommended in Phase 2 can accomplish those three goals, we stated in the request for comments our plan to incorporate (with one modification) the field of view, image size, and response time requirements and test procedures that we proposed in the NPRM to amend FMVSS No. 111. These requirements would become the criteria for determining which rearview video systems would qualify as a Recommended Advanced Technology Feature.

We planned to incorporate the field of view and image size requirements because those criteria apply to the most basic functions that the rearview video system needs to perform. As discussed in the NPRM to amend FMVSS No. 111, the field of view criterion for a 20-foot by 10-foot zone directly behind the vehicle covers the areas behind the vehicle that are associated with the greatest backover crash risk.[7] Further, the available research indicates that the image size criterion (that the test objects contained in the rearview image subtend to a visual angle of at least 5 minutes of arc[8]) will help ensure that drivers are able to make judgments about the objects contained in the rearview image.[9] We also stated that we planned to utilize the test procedures proposed in the NPRM to evaluate conformity with these criteria for the purposes of NCAP.

Further, we planned to adopt the 2.0 second response time requirement from the NPRM to amend FMVSS No. 111 as a criterion for listing a rearview video system as a Recommended Advanced Technology Feature. The agency believes that this requirement is especially important because, regardless of the quality of the image shown to the driver, if the image is not shown before a driver begins a backing maneuver, then it is unlikely that the rearview video system will be able to assist the driver in avoiding a backover crash. As the agency explained in the FMVSS No. 111 NPRM, we believe the 2.0-second limit is appropriate given the amount of time necessary for rearview video systems to conduct the necessary system checks and the activation times that are achievable by liquid crystal displays.[10]

In order to evaluate conformity with the 2.0 second response time criterion for the purposes of NCAP, we recognized in the request for comments that it is important to establish the state of the vehicle prior to testing for response time. Thus, we planned to include the following vehicle conditioning procedure when assessing conformity with the NCAP response time criterion.

*Image response time test procedure.* The temperature inside the vehicle during this test is any temperature between 15 °C and 25 °C. Immediately prior to commencing the actions listed in subparagraphs (a)–(c) of this paragraph, all components of the rearview video system are in a powered off state. Then:

(a) open the driver's door,

(b) activate the starting system using the key,[11] and

(c) place the vehicle in reverse at any time not less than 4 seconds after the driver's door is opened.

Immediately after the vehicle is conditioned in accordance with the above procedure, the agency would select the reverse gear in the vehicle and measure the 2.0-second response time. As mentioned previously, we believe that this conditioning procedure appropriately balanced the need for vehicle conditioning prior to testing conformity with this NCAP criterion and the need to ensure that the rearview image is available to the driver at a time that is appropriate for a driver relying on it to avoid a backover crash. Our naturalistic driving data[12] indicate that approximately 90 percent of the time drivers do not select the reverse gear to begin the backing maneuver less than 4.25 seconds after opening the vehicle's door. In other words, only approximately 10 percent of the time drivers enter their vehicle and select the reverse gear in less than 4.25 seconds. Thus, the vehicle conditioning procedure shown above reasonably approximates the real-world conditions under which drivers would use these

[7] *See* 75 FR 76185, 76227.

[8] The NPRM to amend FMVSS No. 111 proposed two requirements relating to image size. *See id.* First, the horizontal width of the 3 test objects in the last row along the 20-foot by 10-foot zone subtend to an average visual angle of 5 minutes of arc. Second, for each of those test objects, the subtended angle must not subtend to any angle less than 3 minutes of arc. We plan to continue to use this approach in evaluating conformity with the NCAP rearview video system criteria.

[9] The available research cited in the NPRM to amend FMVSS No. 111 states that a driver can make judgments about an object if the object is shown at a subtended angle of 5 minutes of arc. *See* 75 FR 76185, 76229.

[10] *See* 75 FR 76185, 76230.

[11] The terms ''starting system'' and ''key'' have the same meanings that these terms have in FMVSS No. 114, *Theft protection and rollaway prevention. See* 49 CFR Part 571.114.

[12] These data are information NHTSA prepared in support of the research report titled ''On-Road Study of Drivers' Use of Rearview Video Systems.'' *See* Mazzae, E. N., et al. (2008). On-Road Study of Drivers' Use of Rearview Video Systems (ORSDURVS), National Highway Traffic Safety Administration, DOT HS 811 024. A summary of these naturalistic driving data prepared for that study (as it pertains to the length of time drivers take to select the reverse gear) is available in Docket No. NHTSA–2010–0162–0227.

systems and a vehicle conforming to the 2.0 second criteria under those test conditions would have the rearview image available for the driver in a timely fashion.

*C. Summary of the Comments Received*

In response, the agency received comments from a variety of organizations including manufacturers, trade associations, and advocacy groups. The trade associations included the Alliance of Automotive Manufacturers (Alliance), the Association of Global Automakers, Inc. (Global Automakers), the Motor and Equipment Manufacturers Association (MEMA) and the Automotive Safety Council (ASC). The vehicle and equipment manufacturers included General Motors, LLC (GM), Honda Motor Co., Ltd. (Honda), BMW AG, BMW of North America, LLC (BMW), Ford Motor Company (Ford), Tesla Motors, Inc. (Tesla), and Delphi. The advocacy groups submitting comments included the Insurance Institute for Highway Safety (IIHS), the American Motorcyclist Association (AMA), and the Advocates for Highway Safety (the Advocates). In general, the comments supported the agency's plan to update NCAP to include rearview video systems as opposed to ESC.

The most significant concerns raised by vehicle manufacturers focused on the criteria that the agency would use to evaluate systems during Phase 2 (i.e., the field of view, image size, and response time). While many of these concerns requested clarifications of the agency's test methods, others requested changes to those methods. For example, the manufacturers expressed concern with the field of view criteria and how their use of overlays in the rearview image may affect their conformity with that criterion. In another example, several manufacturers suggested different test procedures for assessing conformity with the response time criterion based on their system design.

Further, both vehicle and equipment manufacturers requested the agency provide more clarification as to the details of Phase 1 and Phase 2 implementation. Questions included the timing of each phase, and the systems that would qualify under each phase. The equipment manufacturers further commented that additional consideration should be given to autonomous vehicle controls that may prevent backover crashes and that rearview video systems should be added to the Monroney label (the label that is affixed on new vehicles offered for sale on the dealership lot).

While the advocacy groups generally supported the agency's plan to update NCAP, one advocacy group opposed including rearview video systems into NCAP unless the final rule amending FMVSS No. 111 pursuant to the K.T. Safety Act is released concurrently with the update.

**III. Final Decision and Response to Comments**

While the agency received and reviewed the aforementioned comments, these comments do not support any significant deviation from the agency's original plan to update NCAP that it announced in the June 26, 2013 request for comments. The available information continues to support the decision to provide information to consumers about rearview video systems as soon as possible. Thus, in this final decision, we announce our intention to implement the plan to update NCAP from that request for comments.

Pursuant to that plan, we will remove ESC from the list of Recommended Advanced Technology Features beginning in Model Year 2014 and add rearview video systems using a two-phase process. First, we will immediately begin listing rearview video systems (for vehicle models that have these systems) in the Safety Features section of *www.safercar.gov.* Second, as soon as we are able to verify that vehicle models with rearview video systems meet the field of view, image size, and response time criteria, we will begin listing those vehicles as having a rearview video system that is a Recommended Advanced Technology Feature.

However, in response to the comments received, we believe it is appropriate to clarify and institute various minor adjustments to this plan. As will be discussed in greater detail below, this document clarifies that agency's intention with regard to each phase of the two-phase implementation strategy. It further describes the various adjustments to the test procedure for evaluating conformity with the NCAP field of view, image size, and response time criteria. These adjustments have been incorporated into the test procedures that accompany this document in the docket. The more significant changes in these procedures from the request for comments were: (1) Clarified how the test procedures and performance criteria apply to rearview video systems with alternate views and overlays; (2) added a maximum time to the response time vehicle conditioning test procedure; and (3) adjusted the test reference point as suggested by the commenters. The following is our analysis and response to the comments.

*A. Clarification of Phase 1 and Phase 2 Implementation Schedule*

As mentioned above, the agency announced its plan to use a two-phase approach to incorporate rearview video systems as a Recommended Advanced Technology Feature in NCAP. We stated in the June 26, 2013 request for comments that we would leverage different portions of the Web site in order to minimize the amount of time needed before the agency can begin providing consumers information while also maximizing the usefulness of the consumer information in the long run. In response to the comments received, we are clarifying various aspects of this implementation schedule.

Clarifying the Systems That Qualify for Phase 1 and the Timing of Phase 1

In our June 26, 2013 request for comments we explained that the agency's plan during Phase 1 would be to immediately begin indicating on *www.safercar.gov* which vehicle models have rearview video systems as an available safety feature. We received comments from MEMA and Global Automakers requesting clarification regarding what systems would qualify under this phase and what the timing is for this phase.

The systems that the agency would list in the Safety Features section of *www.safercar.gov* for each vehicle model would be those that the manufacturers advertise (or represent through other means such as informing the agency) as a system that provides a view of the area behind the vehicle. These systems are sometimes listed as ''backup cameras'' or under other similar labels. In other words, they are rearview video systems (not additional mirrors or lenses) that may be listed as a Recommended Advanced Technology Feature but have not yet been evaluated to one or more of the Phase 2 criteria. For instance, a rearview video system that does not meet the response time criterion in Phase 2, cannot not be listed among the Recommended Advanced Technology Features, but will be listed in the Safety Features section.

The intent of the Safety Features section of each vehicle model's page on *www.safercar.gov* is to provide a central location (easily accessible by consumers) with uniform lists of potential additional safety information that consumers can use to compare different vehicle models. Under Phase 1, the agency would be providing this additional information about models with rearview video systems but not

evaluating the systems to determine whether they meet criteria designed to ensure that they address the backover safety problem. Since information about whether vehicle models have rearview video systems is currently available, the agency will immediately begin adding this information to the Safety Features section of *www.safercar.gov* upon the publication of this document.

Timing for Implementing Phase 2

In our request for comments, we did not provide a specific timetable for Phase 2. Instead, we stated our plan to begin listing rearview video systems as Recommended Advanced Technology Features as soon as the agency is able to verify that those systems meet certain basic criteria (as further discussed below) that are designed to ensure that these systems will help drivers avoid backover crashes. We received a number of comments from manufacturers and their trade associations requesting that the agency clarify the timing of Phase 2 and incorporate ''lead time'' into the implementation schedule for Phase 2. For example, the Alliance requested that the Phase 2 change to NCAP be incorporated at least six months after the publication of the test procedures accompanying this document. In another example, GM commented that Phase 2 should begin on the first September 1 date that is at least six months after the publication of the test procedures.

While we acknowledge the commenters' concerns, our decision for the purposes of implementing Phase 2 of incorporating rearview video systems into NCAP as a Recommended Advanced Technology Feature remains the same. We are not convinced, as the commenters seem to suggest, that implementing Phase 2 requires a specific timetable affording manufacturers ''lead time.'' First, unlike when the agency promulgates a new FMVSS, participation in NCAP is voluntary. Second, in the case of this particular technology, the test procedure and performance criteria for the purposes of NCAP are similar to existing procedures that have been publically available since 2010. Given the previous public availability of similar testing procedures and the voluntary nature of this program, the agency does not believe that a specific timetable is necessary for the implementation of this particular technology into NCAP. The agency will work closely with manufacturers to quickly determine whether their systems meet the Phase 2 criteria. We believe that, by working expeditiously with manufacturers, we can begin to provide information to consumers as soon as possible and encourage manufacturers to participate in this aspect of NCAP.

Thus, the agency sees no reason to delay implementing Phase 2. As we will discuss further in a later section, we will no longer be listing ESC as a Recommended Advanced Technology Feature for Model Year 2014. Thus, as soon as the agency can determine (whether through information supplied by a manufacturer or through the agency's own testing) that a certain vehicle model has rearview video systems that meet the Phase 2 criteria, the agency will implement Phase 2 for that particular model (i.e., list the vehicle model as having the Recommended Advanced Technology Feature).

Clarifying the Safety Feature and the Recommended Advanced Technology Feature

In the comments from MEMA and Global Automakers, both organizations requested that the agency clarify to consumers what the difference is between a rearview video system listed in the Safety Features section of the Web site versus a rearview video system listed as a Recommended Advanced Technology Feature. There is concern from both organizations that it will not be apparent to consumers what the difference is when one system is listed as a safety feature whereas another may be listed as a Recommended Advanced Technology Feature.

We agree with the commenters that the agency should clarify the differences between rearview video systems that are listed as a safety feature versus those that are listed as a Recommended Advanced Technology Feature. We believe that consumers should be able to recognize that rearview video systems listed as Recommended Advanced Technology Feature are systems that have been evaluated against certain performance criteria designed to ensure that these systems can help drivers avoid backover crashes. Thus, in our implementation of Phase 1, we will note on *www.safercar.gov* that rearview video systems that are listed only as safety features are systems that have not yet been evaluated to determine whether they conform to the criteria discussed in this document.

Listing Features as Optional or Standard

In addition to the above comments, Global Automakers expressed concern that the agency intended to limit listing rearview video systems as safety feature or a Recommended Advanced Technology Feature only to situations where this equipment is standard. It was not our intent to list rearview video systems only in situations where they are offered as standard equipment. Thus, for both Phase 1 and Phase 2, we will note whenever the system is offered as standard or as optional equipment.

*B. Field of View Criterion*

In our request for comments, we stated our plan to use the proposed field of view requirements and test procedures in the NPRM to amend FMVSS No. 111 as a criterion for the purposes of Phase 2 of this update to NCAP. We stated that a field of view criterion for a 20-foot by 10-foot zone directly behind the vehicle (as measured by the test procedures in the NPRM to amend FMVSS No. 111) would cover the areas behind the vehicle that are associated with the greatest backover crash risk. While the commenters raised various concerns with this planned criterion, we believe that the following clarifications of the agency's test procedures will address their concerns. We continue to believe that the field of view criterion is important and appropriate for determining which rearview video systems the program should list as a Recommended Advanced Technology Feature. The following were the concerns raised by the commenters and our responses to those concerns.

Placement of Test Objects F and G and Low Rear Height Vehicles

As proposed in the NPRM to amend FMVSS No. 111, the test procedure to evaluate the field of view (which covers 5 feet from either side of the vehicle center line to 20 feet longitudinally from the vehicle's rear bumper) would use seven test objects placed along the perimeter of the 10-foot by 20-foot zone behind the vehicle. *See* Figure 1, below. To meet the field of view criterion for the purposes of NCAP, a rearview video system would need to show the entirety of test objects A through E (the test objects greater than 10 feet behind the vehicle bumper) and show at minimum a width of 5.9 inches (150 mm) along any point of test objects F and G (the test objects only 1 foot behind the vehicle bumper). While manufacturers raised concerns with this criterion, we believe that it is appropriate to incorporate it (unaltered) into NCAP for the purposes of assessing rearview video systems in Phase 2.

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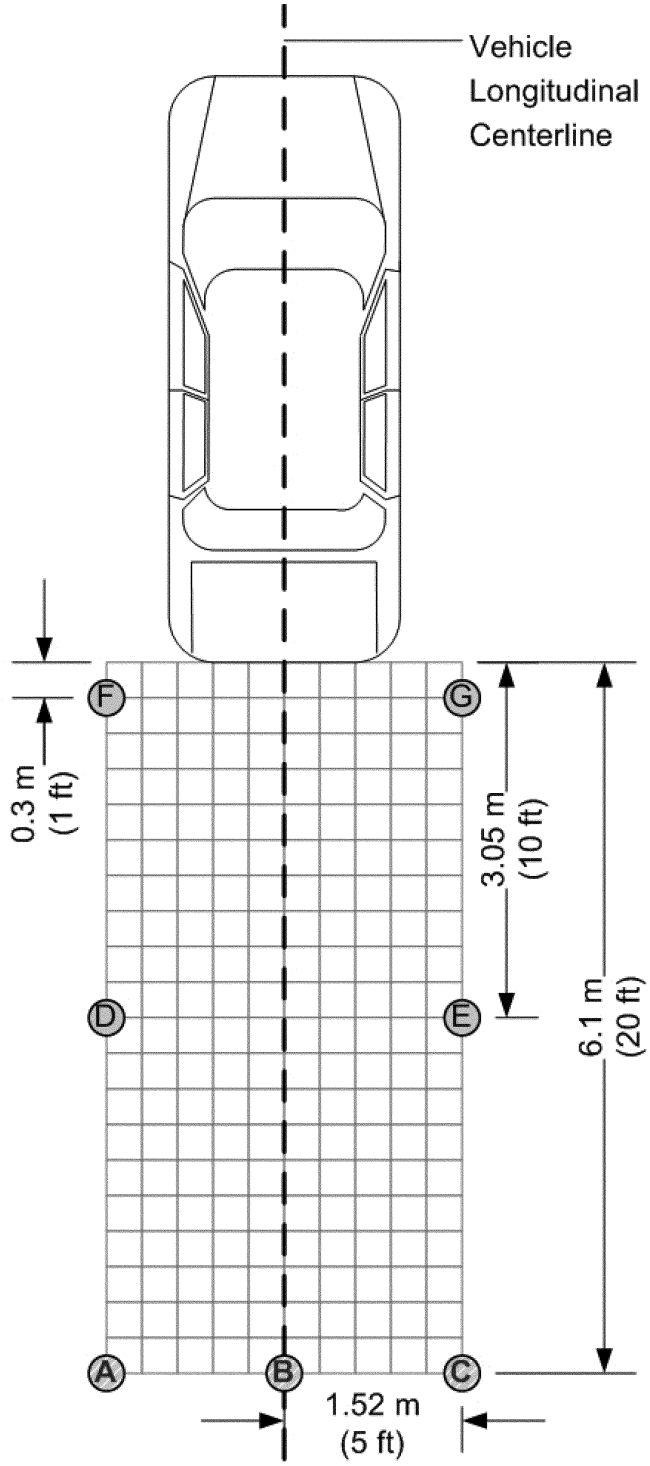


**Figure 1**

Certain manufacturers expressed two concerns with this test procedure to evaluate the field of view criterion. First, both the Alliance and Global Automakers assert that test objects F and G should be placed in a location that is proportional to the vehicle width (as opposed to 5 feet to the left and right of the vehicle centerline). They contend that vehicles using a 130 degree camera would not cover the required portions of test objects F and G (in their current locations). Second, the Alliance stated that certain vehicles with a low rear height (i.e., a vehicle that is not high off the ground) has less height flexibility for mounting a camera. Thus, the Alliance suggests that vehicles with an upper protected surface of the rearmost body structure of 750 mm or less be required to show only a minimum height of 0.4 meters (half the height) of test objects A through E (objects greater than 10 feet from the vehicle bumper).

We disagree with the manufacturers that this procedure for evaluating the field of view criterion does not accommodate vehicles with rearview video systems using a 130 degree camera or vehicles with a low rear height. When we originally developed this test procedure for the NPRM to amend FMVSS No. 111, we specifically designed this test procedure to be able to accommodate these types of vehicle designs. In response to the manufacturers' first concern, it seems clear that if we take into account three-dimensional nature of a camera's field of view, a 130 degree camera will cover the specified areas of all the test objects even if the vehicle has a low rear height. In tests conducted by the agency, the vast majority of vehicles equipped with rearview video systems were capable of meeting the field of view requirements as proposed in the NPRM.[13] Thus, we are unaware of any camera that has a vertical angle limitation which would prevent it from easily being mounted at a pitch which covers the full height of test objects A through E.

In response to the manufacturers' second concern, we note that the portions of the F and G test objects that must be shown are measured by width only in order to accommodate vehicles of varying height and width. Thus, we disagree with the manufacturers that a 130-degree camera is unable to cover the width parameters for test objects F and G. We believe that the diagrams presented by the commenters regarding the inability of the 130-degree camera to cover test objects F and G fail to consider the three-dimensional properties of a camera's viewing angles. As Magna, a rearview video system manufacturer, stated in their comments to the NPRM to amend FMVSS No. 111, a 130-degree camera can readily cover the 5.9-inch (150-mm) width parameters of test objects F and G when mounting height and camera pitch is considered.[14]

Since the available information indicates that existing systems either already conform to (or can be easily adjusted to conform to) the field of view criterion from the June 26, 2013 request for comments, we believe there is no reason to adjust this criterion to reduce the field of view below the 10-foot by 20-foot zone where there is the highest risk of a backover crash.

Default View

The second concern from manufacturers was a question regarding alternative views of the area behind the vehicle that manufacturers provide with their systems. In their comments, Honda described an alternate view called ''top-view'' where the rearview video system displays a focused view of the area immediately behind the vehicle for the purposes of assisting in trailer hitching. Honda notes that this view would not conform to the field of view criterion we described in the request for comment. Honda stated that this mode is only active when a driver intentionally switches to that mode and that the rearview video reverts to a default view that conforms to the field of view criterion upon each new ignition cycle. Similar to Honda's comment, BMW also stated its belief that drivers should have the ability to switch to alternative views that may not meet the field of view criterion and that rearview video systems can default to the NCAP field of view.

While the agency is concerned that drivers may permanently or accidentally deactivate the rearview safety feature, the agency does not intend to preclude this design flexibility for the purposes of NCAP because those features also have the potential to afford drivers benefits in other contexts. However, we believe that the field of view criterion and the test procedure accompanying this document address these concerns from Honda and BMW by balancing our safety concerns with the commenters' request for design flexibility. The test procedure that the agency would use to verify conformity with the field of view criterion does not include any procedure that selects an alternate view. The test uses the initial (or default after each ignition cycle) view that appears after the vehicle's starting systems is activated and the vehicle is placed into reverse.

By defining these conditions in the test procedure, the agency would evaluate the initial/default view of a rearview video system for the purposes of assessing conformity to the NCAP field of view criterion. Thus, vehicles with rearview video systems that are Recommended Advanced Technology Features will provide drivers with a view that covers the greatest areas of backover risks during a backing maneuver. However, manufacturers would not be precluded from offering drivers additional convenience features when designing vehicles to conform to the NCAP field of view criterion.

Overlays

The third concern raised by the manufacturers was the effect of overlays on a rearview video system's ability to conform with the field of view criteria. For example, GM commented that they currently provide two types of overlays in their vehicles' rearview video displays. The first type is a wire frame that indicates the path of the vehicle. GM asserted that these provide distance and predicted path information that can assist a driver when reversing the vehicle. The second type is target warnings. GM stated that these are a crash avoidance feature that can identify objects that are potentially in the path of the vehicle and warn the driver about the presence of these objects. Similar to GM's comment on overlays, the Alliance stated that elements such as guidelines, arrows, icons, and warning messages (e.g., ''Check Surroundings for Safety'') may not meet the NCAP field of view criterion. Both commenters requested that the NCAP field of view criterion include provisions that allow the use of overlays.

The agency agrees with the commenters that video image overlays may have the potential to add safety-related features to rearview video systems by drawing drivers' attention to potential hazards behind the vehicle. This is especially true if rearview video systems are designed to warn drivers of the presence of pedestrians behind the vehicle. However, the agency is conscious that overlays (whether they are object detection warnings, path prediction guidelines, warning statements such as ''Check Surroundings for Safety,'' etc.) can be potentially applied to the rearview image in both safe and unsafe manners. Depending on their size, location, and orientation, overlays have the potential to create unsafe blind zones in the rearview image and to mask small obstacles, such as children. Without further research, the agency is not currently aware of a practicable and objective method of discriminating between safe and unsafe applications of overlays.

Thus, the test procedure and the field of view performance criteria for the purposes of Phase 2 of incorporating rearview video systems into NCAP will not limit the use of overlays so long as the overlays do not cover the portions of the test objects specified in the field of view performance criterion and test procedures. In other words, systems with overlays will still be required to meet the field of view criterion so long as those overlays do not obscure any portion of the test object. However, as discussed earlier, the test procedures published with this document assess conformity with the Phase 2 criteria based on the default (or initial) view after each ignition cycle that the vehicle shows in the rearview image. Therefore, overlays would conform to the field of

[13] *See* Docket No. NHTSA–2010–0162–0133, Vehicle Rearview Image Field of View and Image Quality Measurement.

[14] *See* Comments from Magna Mirrors, April 5, 2011. Docket No. NHTSA–2010–0162.

view criterion (even when they obscure portions of the test objects) if they are manually activated by the driver.

However, we note that on-screen overlays (such as guidelines) may react to driver use of the steering wheel and that the steering wheel position can affect a vehicle's conformity to the field of view criterion. Thus, in order to ensure test repeatability, the test procedures that accompany this document will clarify the steering wheel test condition by stating that the steering wheel is in a position where the longitudinal centerline of all vehicle tires are parallel to the vehicle longitudinal centerline. This steering wheel position simulates the straight ahead steering wheel position, which most likely simulates the conditions drivers experience when conducting a backing maneuver along a straight driveway.

At the moment, we believe this is the most appropriate balance for ensuring that rearview video systems that are listed as Recommended Advanced Technology Features can address the backover safety risk and still have the flexibility to incorporate advanced object detection functions. The agency encourages manufacturers to develop systems that detect and highlight pedestrians and we note that such overlays would not affect a rearview video system's conformity to the NCAP field of view criterion because such a system would not activate an overlay during our field of view test. However, the agency remains cautious that overlays may have the potential to operate unsafely depending on their size, orientation, and placement in the rearview image. Although the agency is currently unaware of a practicable and objective method of distinguishing safe overlays from unsafe overlays at this time, we expect that manufacturers will design overlays conscious of the fact that the rearview video systems that are part of NCAP are systems that address an important safety purpose.

*C. Image Size Criterion*

As mentioned above, the June 26, 2013 request for comments indicated that the agency planned to incorporate the proposed image size requirement set forth in the NPRM to amend FMVSS No. 111 as a criterion for the purposes of NCAP. We cited the available research that indicates that showing the test objects in the rearview image at a subtended visual angle of at least 5 minutes of arc will help ensure that drivers are able to make judgments about the objects contained in the rearview image. The agency continues to believe that it is appropriate to include image size as a criterion for listing a rearview video system as a Recommended Advanced Technology Feature as it received no comments in opposition to this criterion.

However, we acknowledge the concern from Global Automakers that certain rearview displays may have a curved or transparent outer lens that may affect the ability to affix a ruler to the rearview display as described the test procedure proposed in the NPRM to amend FMVSS No. 111. Depending on the specific situation, we note that it may be necessary to remove the transparent cover or use an alternative method to obtain the measurement of the subtended angle. The agency believes that, as long as the measurement of the subtended angle is valid, accommodating rearview video systems with transparent covers over the rearview display in the performance of the test will not alter the test results. Thus, the test procedure (accompanying this document) that we will use to evaluate conformity with the image size criterion for the purposes of NCAP is the proposed test procedure set forth in the NPRM to amend FMVSS No. 111.

*D. Response Time Criterion*

As mentioned above, the agency indicated in its June 26, 2013 request for comments that it plans to evaluate the response time of rearview video systems before listing them as a Recommended Advanced Technology Feature. We stated that the 2.0-second limit is appropriate given the amount of time necessary for rearview video systems to conduct the necessary system checks and the activation times that are achievable by liquid crystal displays. Because the availability of the rearview image at the beginning of the backing maneuver is critical to realizing the safety benefits of this technology, we believe that it is appropriate for these systems to activate as soon as possible.

However, we acknowledged the concerns of manufacturers that the 2.0 second response time requirement that was proposed as a part of the NPRM to amend FMVSS No. 111 did not specify the vehicle condition prior to testing. Based on the comments received from the NPRM to amend FMVSS No. 111, we believe that the vehicle's state can affect the results of the test. Thus, we indicated in our June 26, 2013 request for comments that our plan for NCAP would be to use a test procedure to condition the vehicle prior to testing the response time criterion. To that end, we indicated that we would use the following procedure:

*Image response time test procedure.* The temperature inside the vehicle during this test is any temperature between 15 °C and 25 °C. Immediately prior to commencing the actions listed in subparagraphs (a)–(c) of this paragraph, all components of the rearview video system are in a powered off state. Then:

(a) open the driver's door,

(b) activate the starting system using the key,[15] and

(c) place the vehicle in reverse at any time not less than 4 seconds after the driver's door is opened.

The manufacturers and their trade associations had additional concerns in response to the new test procedure that we announced in the request for comments. We address those concerns in the sections that follow and have made the appropriate adjustments in the test procedures accompanying this document in the docket.

Two-Second Response Time Criterion

Various commenters stated that the response time criterion should be greater than 2.0 seconds. Without additional reasoning, the Alliance stated that it supported a 3.0 second response time criterion so long as the vehicle is preconditioned according to the test procedure specified in the request for comments. Similarly, GM stated a 2.5 second maximum response time is more appropriate in order to accommodate the various types of displays that rearview video systems may use because integrated console displays require additional time to activate when compared to in-mirror displays. Separately, Global Automakers stated that some systems are designed to begin system activation when the ignition is on and the engine is running. Thus, they suggest that the vehicle conditioning begin when the vehicle's ignition is turned to the on position (as opposed to when the door is opened).

While we have considered the concerns expressed by the commenters, they do not compel us to change the response time criterion of 2.0 seconds for the purposes of NCAP. The agency believes very strongly that this criterion is as important as the field of view and image size criteria. As we stated before, a rearview image that shows the appropriate areas behind the vehicle at the appropriate size will still be unable to help the driver avoid a crash if it does not appear in a timely fashion (i.e., before the driver begins the backing maneuver). When we began the rulemaking process to amend FMVSS No. 111 by issuing an ANPRM in March of 2009, we recognized this important

[15] The terms ''starting system'' and ''key'' have the same meanings that these terms have in FMVSS No. 114. *See* 49 CFR 571.114.

safety concern and proposed a 1.25 second response time.

However, in the NPRM, we proposed a 2.0 second requirement for the purposes of amending FMVSS No. 111. We cited two technological limitations that necessitated a longer maximum response time. First, a need for additional tolerances for certain systems to produce the required image in part because those systems conduct image quality control checks before displaying the image. Both GM and Gentex stated in their comments that a required image response time of 1.25 may adversely affect the image quality displayed in those systems.

Second, the agency noted that liquid crystal displays (LCDs) require time to warm-up before they can display an image and that this time may vary depending on the location of the visual display. The agency acknowledged that in-mirror displays (which are only activated when the reverse gear is selected) may require additional warm-up time when compared to in-dash displays (which may be already in use for other purposes such as route navigation). For these reasons, the proposed rule in the NPRM extended the image response time requirement to 2.0 seconds. The agency was not aware of any rationale that justified extending the response time requirement beyond 2.0 seconds.

For the purposes of evaluating conformity of the response time criterion in NCAP, we see no reason to deviate from what we proposed as appropriate for FMVSS No. 111. Further, we are still concerned that a slow-responding rearview video system will fail to present the rearview image to the driver in time to assist the driver in avoiding a backover crash. The agency recognizes that, in order to reduce the risk of a backover crash, the countermeasure needs to be available when the risk is present. It seems clear from the available information that the backover risk exists as soon as the vehicle begins moving in reverse.

While we acknowledge GM's comment that our response time criterion is based (in part) on the timing that is technically feasible for rearview video systems that use in-mirror displays, we disagree that integrated console displays will necessarily have longer response times. In deciding to propose the 2.0 second response time for the purposes of FMVSS No. 111, we reasoned that in-mirror systems would take longer to initialize than integrated console systems due to their generally powered-off state during normal vehicle operation. Without additional data (or some technical reason) demonstrating a rationale that explains why integrated console systems now require more time than we believed was necessary for in-mirror displays, we are not convinced that it is not technically possible for rearview video systems to achieve a 2.0 response time criterion for the purposes of NCAP. We note that manufacturers using integrated console screens with their rearview video systems may always initialize their screens at an earlier time before the vehicle is shifted into reverse in order to further minimize their response time.

We have also considered Global Automakers' comment that some vehicles initialize their rearview video system when the ignition is activated and the engine is running. We note that this is permissible and nothing in the test procedure precludes such a system for the purposes of being considered a Recommended Advanced Technology Feature in NCAP. However, for the reasons mentioned above, we decline to adjust the NCAP rearview video system test conditioning procedure to include additional time from when the driver opens the vehicle door (as suggested by Global Automakers) or extend the response time to 3.0 seconds (as suggested by the Alliance). Given the severity of the potential safety risk of not presenting the rearview image to the driver in a timely fashion, neither commenter presented a rationale that supports extending the response time criterion or its conditioning procedure.

As noted above, we believe that there are simple strategies available that would enable manufacturers to significantly reduce their response time (e.g., initializing a console screen earlier). Thus, in order to recommend to consumers rearview video systems as Recommended Advanced Technology Features that adequately address the backover safety risk, we do not believe it is appropriate to adjust the test procedure in the manner suggested by the commenters for the purposes of NCAP.

Maximum Test Procedure Time

In addition, various commenters stated that, in order save power, electronic systems in vehicles will initiate sleep mode if the vehicle is inactive for a given period of time. Thus, these commenters expressed concern with the fact that the vehicle conditioning test procedure that we specified in the request for comments has a minimum procedure time but not a maximum procedure time. In other words, while the agency would not place the vehicle into reverse less than 4.0 seconds after the door is opened, the commenters are concerned that the agency would wait much longer than 4.0 seconds before placing the vehicle into reverse and testing for the response time criterion. Thus, for example, GM recommended that the procedure specify that the vehicle is shifted into reverse a maximum 60 seconds after the vehicle is started. Using similar reasoning, Ford suggested a 5 second maximum time for activating the starting system (as measured from a new item in the vehicle conditioning procedure where the vehicle door is closed after it is opened).

We agree with the commenters that this part of the vehicle conditioning procedure is unspecified and that it should be specified for the purposes of evaluating conformity with the NCAP response time criterion. Thus, we have included a maximum vehicle conditioning procedure time in addition to the original minimum time of 4.0 seconds in the test procedures that accompany this document in the docket. For the purposes of the NCAP conformity test, we have chosen to include a maximum procedure time of 6.0 seconds because our intent is to test the rearview video system response time at a point in time that is close to 4.0 seconds after the vehicle door is opened. As we mentioned in our request for comments, we believe that a response time of 2.0 seconds (as measured in accordance with a condition procedure that lasts 4.0 seconds) will cover the vast majority of potential driving behavior and ensure that the rearview image is available to the driver at the appropriate time.[16]

Other Response Time Test Procedure Issues

GM and the Alliance commented that the NCAP criterion does not indicate how to determine that the shift to reverse has been accomplished. They suggested that an easy and reliable method for determining that reverse has been selected is to observe the backup lamps.

We have considered these comments regarding using the backup lamp(s) as a reference point for the start of the response time criteria (reverse has been selected). While it is possible that on many vehicles measuring the activation of the backup lamps is a reasonable

[16] We note that the test procedure accompanying this document in the docket specifies that the vehicle is placed in reverse at any time that is between 4.0 seconds and 6.0 seconds from when the vehicle door was opened. In other words, the rearview video system must be able to achieve the response time of 2.0 seconds when the vehicle is conditioned using a procedure that lasts any amount of time between 4.0 and 6.0 seconds to qualify as a Recommended Advanced Technology Feature in NCAP.

proxy for determining when the reverse has been selected, it is not the only means for determining that this item in the test procedure is complete. Although it is important that the agency conduct the test and determine the point in time that the driver (or test engineer) selects reverse, any valid means for achieving this goal will produce a valid test under the test procedures accompany this document in the docket. Thus, the test procedure accompanying this document in the docket does not specify a specific method of determining when reverse is selected.

However, we believe it is helpful to clarify the point in time at which we begin measuring the 2.0 second response time. As mentioned above, the vehicle conditioning procedure specified in the June 26, 2013 request for comments specified that the vehicle is placed in reverse within a specified range of time. We intended this aspect of the vehicle conditioning procedure to refer to the selection of the reverse direction by the driver (or test engineer). Thus, the test procedures accompanying this document in the docket clarifies this aspect of the vehicle conditioning procedure by specifying that reverse is selected within a specified range of time (as opposed to specifying that the vehicle is placed in reverse within a specified range of time).

*E. Minor Test Procedure Comments*

In addition to the above comments, certain manufacturers also raised a few points regarding the test procedures for assessing conformity with the Phase 2 criteria that require clarification. We agree with the commenters that these points should be clarified and respond to them as follows:

Orientation of Test Objects F and G

We acknowledge the Alliance's concern regarding whether test objects F and G can be rotated in order to aim the 150-mm-vertical stripe towards the camera. We note that the test procedure and the field of view criteria adopted for the purposes of NCAP in this document merely requires that a 150-mm width (along the circumference) of test objects F and G be visible and does not restrict the orientation of the vertical stripe on those test objects. The criterion is that the 150-mm wide circumference is visible. Thus, it is permissible to rotate test objects F and G in order to facilitate measuring that part of the field of view criterion.

Test Loading Conditions

The Alliance also commented that the vehicle loading test conditions in the proposal to amend FMVSS No. 111 differed from the loading conditions for the other requirements in FMVSS No. 111. The Alliance recommended that the loading requirements be harmonized for both the rearview mirror and rearview video system tests at the average occupant weight of 68 kg. Unlike in the other requirements in FMVSS No. 111, the loading conditions in the test procedure proposed for rearview video systems in the NPRM to amend FMVSS No. 111 separate the occupant weight load (68 kg) into two portions (45 kg on the seat pan and 23 kg on the floorboard) for a driver and four passengers in their designated seating positions.

We disagree with the Alliance that the same loading conditions should be applied to the rearview video system test (for the purposes of NCAP) and the other requirements of FMVSS No. 111. We are concerned that in some cases that a different weight distribution may impact the vehicle's pitch in a way that modifies the outcome of the rearview video system test. Unlike the mirror requirements of FMVSS No. 111, rearview video systems that are Recommended Advanced Technology Features under NCAP would not necessarily be adjustable in the horizontal and vertical direction. Therefore, the potential impacts of vehicle pitch (because of weight) are more critical than in the mirror provisions of FMVSS No. 111. Furthermore, the agency believes that splitting the weight about the seat and floor pan more accurately simulates an actual vehicle occupant. Accordingly, we continue to believe that the test procedure loading conditions from the NPRM to amend FMVSS No. 111 is more appropriate for evaluating rearview video systems in the context of the Phase 2 criteria for NCAP.

However, we believe that the test procedure could be improved by more clearly stating how the vehicle would be loaded if it has more than 5 designated seating positions. Thus, we have clarified the test procedures accompanying this document in the docket by specifying that when a vehicle has more than 5 designated seating positions, the weights that add up to 68 kg simulating each of the five occupants shall be placed in the driver's designated seating position and any other available designated seating position in the vehicle.

Test Reference Point

By incorporating the test procedures proposed in the NPRM to amend FMVSS No. 111, we planned to use a test reference point simulating the eye point of a 50th percentile male driver for the purposes of evaluating conformity with the Phase 2 criteria. The procedure establishes a test reference point where an image is taken to evaluate conformity with the field of view and image size criteria in NCAP. The procedure identifies an initial forward-looking eye midpoint of the driver ($M_f$) that is 632 mm above the H point (a defined location on the driver seat) and 96 mm aft of the H point. The procedure also establishes a head/neck joint center (J) 100 mm rearward of the forward-looking eye midpoint and 588 mm vertically above the H point. A point of rotation ($J_2$) is then determined by drawing an imaginary horizontal line between the forward-looking eye midpoint ($M_f$) and a point vertically above the head/neck joint center (J). Finally, the procedure locates the test reference point ($M_r$) by rotating the forward-looking eye midpoint about the aforementioned point of rotation until the straight-line distance between the test reference point and the center of the visual display reaches the shortest possible value. The locations of these points are visually represented in the NPRM proposing to amend FMVSS No. 111.[17]

The Alliance commented to one specific aspect of this procedure. They stated that while the forward looking eye midpoint of the driver ($M_f$) is located 632 mm vertically above the H point in the proposed rule, FMVSS No. 104, *Windshield wiping and washing systems,* references a horizontal plane 635 mm vertically above the H point. In order to increase consistency across the various standards, the Alliance requested that we use a forward looking eye midpoint of the driver ($M_f$) that is 635 mm above the H point.

We agree that the requirements of FMVSS No. 104 and today's decision for the purposes of NCAP should be harmonized. We believe that a 3 mm testing height modification from the requirements proposed in the NPRM would not have any significant impact on the test results. We analyzed what the potential difference in test results could be for different eye points and found that (between a 5th percentile female and a 95th percentile male) the difference in apparent image size was only 0.03 minutes of arc (a small amount compared to the 5 minutes arc image size criterion). Thus, we agree with the Alliance that it is appropriate to use the eye point that is 635 mm above the H point for the purposes of evaluating rearview video systems in NCAP.

[17] *See* 75 FR 76185, 76233.

Driver Seating Position

By incorporating the driver seating position test conditions from the NPRM to amend FMVSS No. 111, our plan in the request for comments was to use a driver seating position that is adjusted to: (1) The midpoint of the longitudinal adjustment range, (2) the lowest point along the vertical adjustment range, and (3) have a seat back angle at the vertical portion of the H-point machine's torso weight hanger at 25 degrees. In its comments, the Alliance suggested that the driver seating position condition in the proposed test procedure be harmonized with the test procedure in FMVSS No. 208, *Occupant crash protection.* In other words, the Alliance recommends that the longitudinal adjustment for the driver seating condition can be the closest adjustment point to the rear of the midpoint if no adjustment point exists at the midpoint. They also recommend that the condition specify that seat backs are adjusted to the ''manufacturer's nominal design riding position'' recommended by the manufacturer.

The agency has considered these comments regarding the driver seating position. We agree with the Alliance that this test procedure (for the purposes of NCAP) should clarify the longitudinal adjustment setting of the driver seat should no adjustment position exist at the exact longitudinal midpoint. We agree with the Alliance's recommendation that in this situation, the closest adjustment position to the rear of the longitudinal midpoint should be used. Thus, the test procedures accompanying this document in the docket will address this change.

However, we decline to adopt the manufacturer's recommended nominal seat back position test condition as proposed by the Alliance. Unlike in FMVSS No. 208, we believe it is necessary to specify the seating position when testing rearview video systems for the purposes of NCAP because these tests address different safety concerns. While FMVSS No. 208 regulates crash protection, FMVSS No. 111 regulates rear visibility. Unlike in FMVSS No. 208, variations in the seat back position can significantly affect the eye point used to evaluate conformity with the NCAP criteria (particularly with respect to the possibility that certain interior features of the vehicle's cabin can become obstacles between the specified eye point in the test procedure and the rearview image). Thus, the test procedures accompanying this document in the docket do not adopt a nominal seat back position test condition as requested by the commenter. Instead, it will continue to use a seat back angle at the vertical portion of the H-point machine's torso weight hanger at 25 degrees.

*F. Removing Electronic Stability Control From NCAP*

In the June 26, 2013 request for comments, we stated that we will remove ESC as a Recommended Advanced Technology Feature from NCAP. We received no comments opposed to our plan. We continue to believe that listing ESC as a recommended technology is no longer useful information to consumers seeking comparative information about different vehicle models because ESC is now a required safety feature on vehicles with GVWR of 10,000 pounds or less. Thus, in implementing this update to NCAP, we will be substituting rearview video systems for ESC on *www.safercar.gov*. Therefore, we will not continue to list ESC as a Recommended Advance Technology Feature beginning with the current Model Year 2014.

*G. Other Issues*

Monroney Label

A number of commenters (Delphi, ASC, and MEMA) suggested that the agency incorporate all of the safety technology information onto the Monroney Label (the label that is affixed on new vehicles offered for sale on the dealership lot). The commenters suggested that placing this information on the Monroney Label would more quickly and effectively achieve the goal of informing consumers about the potential safety benefits of rearview video systems. We agree with these commenters that exploring additional ways to promote NCAP safety information on the Monroney Label would be useful. We reiterate our statements from the request for comment that we are currently considering whether to incorporate additional advanced crash avoidance technologies (beyond rearview video systems) into NCAP.[18] When we have determined which additional technologies will be incorporated, we will also consider whether we should initiate a rulemaking to determine whether and how the incorporated advanced technologies should be included on the Monroney label.

Other Technologies Beyond Rearview Video Systems

Other commenters (Delphi, AMA, ASC, and Tesla) also recommended that the agency consider other advanced crash avoidance technologies for NCAP and not preclude the potential for these other technologies to be added to NCAP. We agree with the commenters that additional technologies should be considered for incorporation into NCAP. As mentioned above, we are considering what additional technologies to incorporate into NCAP. We published a request for comments on April 5, 2013 suggesting various new technologies for incorporation into NCAP. We will continue to explore additional improvements to NCAP in addition to the update announced by this document.

Forthcoming Publication of UMTRI Research

The Alliance and General Motors both commented that a forthcoming study from the University of Michigan Transportation Research Institute (UMTRI) may indicate that rearview video systems are already having a significant impact on reducing crashes. They asserted that, if this is the case, then Phase 2 may not be necessary. While the agency is encouraged that organizations continue to devote resources to researching backover crashes (and how to avoid these crashes), the information is currently unavailable. Thus, the agency is unable to utilize this information to further refine the performance criteria established by this document for the purposes of NCAP. However, regardless of the results of the UMTRI research, minimum performance criteria are still necessary in order to ensure that the systems recommended to consumers by NCAP are systems designed to assist drivers in avoiding backover crashes. Even if the currently available equipped systems are suitable for helping drivers avoid backover crashes, NCAP would not be able to ensure that future systems that it recommends would be similarly suitable for avoiding backover crashes without some minimum performance criteria.

Concerns About the K.T. Safety Act and the Final Rule To Amend FMVSS No. 111

Two commenters expressed concerns about the K.T. Safety Act and our ongoing efforts to amend FMVSS No. 111 pursuant to requirements of the K.T. Safety Act. First, the Advocates commented that NHTSA should not update NCAP to include rearview video systems without concurrently issuing a final rule amending FMVSS No. 111 because the update to NCAP does not fulfill the requirements of the K.T. Safety Act. Second, Global Automakers commented that the agency should

[18] *See* 78 FR 20597, Request for Comments, April 5, 2013.

ensure that the requirements in the final rule do not deviate from the criteria that are established in today's document updating NCAP.

In response to the Advocates, we agree that this document does not fulfill the requirements of the K.T. Safety Act. We agree that this document announcing the agency's decision to update NCAP is not a substitute for the agency's obligation under the K.T. Safety Act to expand the required field of view to enable drivers of motor vehicles to avoid backover crashes. As we discussed previously, this document is not a resolution to the rulemaking action to amend FMVSS No. 111. However, we cannot agree with the Advocates that it is unreasonable to pursue this update to NCAP prior to the promulgation of a final rule amending FMVSS No. 111 pursuant to the K.T. Safety Act. As we mentioned above, we believe that this update to NCAP will immediately help inform consumers about the risks of backover crashes, the potential safety benefit of rearview video systems by helping drivers avoid such crashes, and the vehicle models that are equipped with these systems. These goals can be achieved independent prior to the promulgation of a final rule to amend FMVSS No. 111 and during the phase-in period after its promulgation. Thus, we see no reason to delay this decision to update NCAP.

In response to Global Automakers, we cannot rule out the possibility that the administrative record for the rulemaking to amend FMVSS No. 111 may require the agency to conclude in a manner that is inconsistent with today's final decision on updating NCAP. While we agree in principle with Global Automakers that the criteria for evaluating rearview video systems in NCAP should not be different from the requirements eventually established in a final rule amending FMVSS No. 111, that rulemaking action is still pending and the agency's decisions in that rulemaking will need to be based on that rulemaking's administrative record. As we explained in our response to the Advocates' comment, this document is not a resolution to the issues presented in the ongoing rulemaking to amend FMVSS No. 111. The requirements that are appropriate for a final rule amending FMVSS No. 111 must be considered in the context of establishing a Federal regulation. Thus, while the agency understands the concern expressed by Global Automakers, the outcome of this final decision to update NCAP is separate from our rulemaking action to amend FMVSS No. 111 and cannot be determinative of the outcome of that action.

Request for Additional Public Consultation

Additionally, Global Automakers suggested that the agency hold a technical workshop to help increase public dialogue on the NCAP rearview video system criteria. Separately, MEMA contended in their comments that NHTSA should provide additional public consultation and dialogue (e.g., a public workshop or an additional request for comments in the **Federal Register**) because adopting the criteria from the NPRM to amend FMVSS No. 111 creates a ''de facto final rule and compliance standard.''

In response to MEMA, we disagree that this document creates a de facto final rule and compliance standard. NCAP is a voluntary program where the agency provides comparative safety information about vehicle models to motor vehicle consumers. It is not a rule that applies to any particular person or entity. Instead, the essence of the program is the agency publishing the available comparative safety information on various vehicle models that are available for sale to help consumers make informed purchasing decisions. The agency has published a notice to the public and solicited comments regarding its plans to update NCAP in the interests of designing a program that serves the interests of consumers making vehicle purchase decisions. Through our June 26, 2013 request for comments and today's final decision responding to those comments, we believe that we have provided ample opportunity for public consultation and dialogue on the matter and believe that any further consultation is likely to further delay providing this useful information to motor vehicle consumers without any significant improvements to the program.

IIHS Research

IIHS commented that they support NHTSA's efforts to promote countermeasures that assist drivers in avoiding backover crashes. They also agreed that promoting rearview video systems through NCAP is a useful step toward addressing the backover safety problem. IIHS noted that all the available data show that rearview video systems greatly increase visibility behind the vehicle and should create a measureable effect on reducing backing crashes.

However, they stated that their preliminary data has yet to suggest these systems are preventing crashes and reducing loss. They cite their Highway Loss Data Institute compared insurance claim frequencies for physical damage to the at-fault vehicle (collision coverage) and physical damage to a struck vehicle or property (property damage liability coverage) in select Mazda and Mercedes-Benz vehicle models with and without rearview video systems. They stated that, for these models, the claim frequencies were directionally inconsistent across coverage types and they did not observe statistically significant reductions in claim frequencies. The authors of the study of Mercedes-Benz vehicles further noted that the transmission status was unknown meaning that all crashes were considered—including those for which backup cameras have no ability to prevent. Finally, the authors of the study of Mazda vehicles noted that there was a reduction in bodily injury claims, which was statistically significant for paid claims of high severity and that this suggests that the cameras may be reducing some non-occupant crashes.

As always, the agency appreciates the data that the IIHS provided. Our recent experimental research on the effectiveness of rearview video systems has focused primarily on the crash problems directly addressed in the K.T. Safety Act, which are backover crashes involving vulnerable populations such as those involving young children. While the IIHS data is not focused specifically on these types of crashes, the agency expects data on crashes resulting in a severe injury or death may resemble the direction and magnitude of effectiveness found in our experimental research. In other words, even though the IIHS data examines all crashes (not just backover crashes) considering only data on crashes that resulted in severe injuries or deaths may reveal a correlation between rearview video systems and these types of injuries.

The agency understands that these types of crashes occur much less frequently than property damage crashes, which makes it more difficult to find statistical significance using the Highway Loss Data Institute methodology. In the IIHS analysis of crash data for Mercedes-Benz vehicles with and without rearview video systems, the organization did not find a statistically significant difference (which may be partially attributable to the data's wide confidence interval). However, in their analysis of Mazda data the organization found a statistically significant reduction (22.2 percent) in high severity bodily injury crashes. As IIHS stated in their comments, this data is still preliminary data. Further, this data is not designed to isolate the effect of rearview video systems on the specific type of crashes that we are addressing in this

document—backover crashes. However, when considering these studies as well as the other available studies completed by NHTSA and other organizations, including all the limitations within the methodologies, the agency continues to believe that the installation of rearview video systems will decrease the risk of pedestrian backover crashes.

## IV. Conclusion

For all the reasons stated above, we believe that it is appropriate to update NCAP to substitute rearview video systems for ESC at this time. We believe that this two-phased approach is the most suitable approach for maximizing not only how quickly the agency can begin providing information to consumers, but also the quality of information that will be provided. As we stated previously, this final decision covers only the agency's planned update to NCAP to incorporate rearview video systems. This document does not serve as a resolution to the agency's ongoing rulemaking to amend FMVSS No. 111 and does not substitute the agency's efforts in that area. We remain committed to completing the rulemaking to amend FMVSS No. 111 pursuant to the requirements of the K.T. Safety Act.

**Authority:** 49 U.S.C. 32302, 30117, 30166, 30181, and 30182; delegation of authority at 49 CFR 1.95.

Issued in Washington, DC, on September 24, 2013 under authority delegated in 49 CFR 1.95.

**David L. Strickland,**

*Administrator.*

[FR Doc. 2013–23700 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 120706221–2705–02]**

**RIN 0648–XC881**

### Atlantic Highly Migratory Species; Commercial Atlantic Aggregated Large Coastal Shark (LCS), Atlantic Hammerhead Shark, Atlantic Blacknose Shark, and Atlantic Non-Blacknose Small Coastal Shark (SCS) Management Groups

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing the commercial management groups for aggregated LCS and hammerhead sharks in the Atlantic region, and blacknose sharks and non-blacknose SCS in the Atlantic region. This action is necessary because the commercial landings of Atlantic aggregated LCS and Atlantic blacknose sharks for the 2013 fishing season have reached, or are projected to reach, 80 percent of the available commercial quota as of September 13 and September 26, 2013, respectively.

**DATES:** The commercial Atlantic aggregated LCS and Atlantic hammerhead shark management groups and the commercial Atlantic blacknose shark and Atlantic non-blacknose SCS management groups are closed effective 11:30 p.m. local time September 30, 2013 until the end of the 2013 fishing season on December 31, 2013 or until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Peter Cooper 301–427–8503; fax 301–713–1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), records of sharks that are first received by dealers from a vessel must be submitted electronically on a weekly basis through a NMFS-approved electronic reporting system by the dealer and received by NMFS no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Under § 635.28(b)(2), when NMFS calculates that the landings for any species and/or management group of a linked group has reached or is projected to reach 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fishery for all linked species and/or management groups is closed, even across fishing years.

On July 3, 2013 (78 FR 40318), NMFS announced the final rule for Amendment 5a to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), which, among other things, established new, final adjusted 2013 quotas for aggregated LCS, hammerhead sharks, blacknose sharks, and non-blacknose SCS in the Atlantic region. On September 2, 2013, NMFS transferred 68 metric tons (mt) dressed weight (dw) (149,914 lb dw) of non-blacknose SCS quota from the Atlantic region to the Gulf of Mexico region. Based on these two actions, the current adjusted quotas for the species noted above are as follows: the Atlantic aggregated LCS management group quota is 168.9 mt dw (372,552 lb dw), the Atlantic hammerhead shark management group quota is 27.1 metric tons (mt) dressed weight (dw) (59,736 lb dw), the Atlantic blacknose shark management group quota is 18 metric tons (mt) dressed weight (dw) (39,749 lb dw), and the Atlantic non-blacknose SCS management group quota is 193.5 metric tons (mt) dressed weight (dw) (426,570 lb dw). Amendment 5a also linked quotas of certain management groups that contain shark species that are often caught together in the same fisheries. Under these linkages, linked shark management groups close when landings of one group have reached, or are expected to reach, 80 percent of the quota to prevent exceeding the quota of that management group through discarded bycatch. Currently, the regional aggregated LCS and hammerhead shark management groups are linked, and the regional blacknose shark and non-blacknose SCS management groups are linked.

Dealer reports received through September 13, 2013, indicate that 135.2 mt dw or 80 percent of the available Atlantic aggregated LCS quota has been landed, 11.7 mt dw or 43 percent of the available Atlantic hammerhead shark quota has been landed, 13.7 mt dw or 76 percent of the available Atlantic blacknose shark quota has been landed and that 90.6 mt dw or 47 percent of the available Atlantic non-blacknose SCS quota has been landed. Projections indicate that 80 percent of the Atlantic blacknose shark quota will be landed by September 26, 2013. Based on these dealer reports, NMFS estimates that the 80-percent limit specified for a closure notice in the regulations has been, or will be, reached or exceeded for the Atlantic aggregated LCS and Atlantic blacknose shark management groups. Accordingly, because the Atlantic aggregated LCS and Atlantic

hammerhead shark management groups are linked and the Atlantic blacknose shark and Atlantic non-blacknose shark management groups are linked, NMFS is closing the commercial aggregated LCS, hammerhead shark, blacknose shark, and non-blacknose SCS management groups in the Atlantic region as of 11:30 p.m. local time September 30, 2013. The only shark management groups that remain open are the shark research fishery, non-blacknose SCS and blacknose shark in the Atlantic region, blue shark, and pelagic sharks other than porbeagle and blue shark management groups.

The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N. lat, proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of quota monitoring and setting of quotas, to be within the Gulf of Mexico region.

During the closure, retention of aggregated LCS, hammerhead sharks, blacknose sharks, and non-blacknose SCS in the Atlantic region is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4—unless the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and ''no sale'' provisions apply (§ 635.22(a) and (c)), or the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard. During the closure, a shark dealer issued a permit pursuant to § 635.4 may not purchase or receive aggregated LCS, hammerhead sharks, blacknose sharks, and/or non-blacknose SCS in the Atlantic region, except under specific circumstances as specified in § 635.32 (shark research fishery); § 635.28(b)(5) (sharks were harvested prior to the closure); or sharks were harvested by a state vessel that has fished only in state waters.

## Classification

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway and any delay in this action would result in overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the stock may be negatively affected and fishermen ultimately could experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 25, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–23741 Filed 9–25–13; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 78, No. 189
Monday, September 30, 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 TRANSPORTATION

### Office of the Secretary

### 14 CFR Parts 295 and 298

**[Docket No. DOT–OST–2007–27057]**

**RIN 2105–AD66**

## Enhanced Consumer Protections for Charter Air Transportation

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The U.S. Department of Transportation (Department) seeks comment on four new proposals to strengthen the legal protections provided to consumers of charter air transportation. First, this proposal would require air taxis and commuter air carriers that sell charter air transportation but rely on others to perform that air transportation to make certain consumer disclosures as recommended by the National Transportation Safety Board (NTSB). This proposal would also create a new class of indirect air carriers to be called ''air charter brokers'' to provide as principals single entity charter air transportation of passengers aboard large and small aircraft. In addition, this NPRM would codify the exemption authority granted to indirect air carriers to engage in the sale of air transportation related to air ambulance services. Finally, the NPRM would make clear and codify that certain air services performed under contract with the Federal Government are in common carriage.

**DATES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received on or before November 29, 2013.

**ADDRESSES:** You may file comments identified by the docket number DOT–OST–2007–27057 by any of the following methods:

○ *Federal Rulemaking Portal:* go to *http://www.regulations.gov* and follow the online 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 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays.

○ *Fax:* (202) 493–2251.

*Instructions:* You must include the agency name and docket number DOT–OST–2007–27057 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. 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 in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), 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:** Jonathan Dols, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Room W98–312, Washington, DC 20590, (202) 366–9342, *jonathan.dols@dot.gov*. You may also contact Lisa Swafford-Brooks, Chief, Aviation Licensing and Compliance Branch, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Room W98–304, Washington, DC 20590, (202) 366–9342, *lisa.swaffordbrooks@dot.gov*.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Transportation (DOT) is issuing this notice of proposed rulemaking (NPRM) to improve the air travel environment for consumers of single entity charter air transportation based on its statutory authority to license entities engaging in air transportation, 49 U.S.C. 41101, and its statutory authority to prohibit unfair and deceptive practices in air transportation, 49 U.S.C. 41712. First, the Department is taking action to protect consumers by ensuring that consumers of single entity charter air transportation have adequate information about the operator of chartered aircraft and by enumerating certain prohibited unfair and deceptive practices by air taxis and commuter air carriers. Second, also to protect consumers, the Department is creating a new class of indirect air carriers called air charter brokers and establishing required disclosures and enumerating certain prohibited unfair and deceptive practices for this class. Third, the Department is codifying a 1983 Civil Aeronautics Board order granting exemption authority to indirect air carriers that provide air ambulance services. Fourth, the Department is clarifying that the contracting for air transportation with the Federal government under a GSA Schedule involves common carriage operations.

| Subject | Proposed rule |
|---|---|
| 1. NTSB Recommendation | Requires air taxis and commuter air carriers that sell charter air transportation, but rely on others to perform that air transportation, to make certain disclosures, including the name of the direct air carrier operating the service and any other name in which that direct air carrier holds itself out to the public.<br>Enumerates certain prohibited unfair and deceptive practices or unfair methods of competition by air taxis registered with the Department and commuter air carriers. |

| Subject | Proposed rule |
|---|---|
| 2. New Class of Indirect Air Carrier | Creates an ''air charter broker'' class of indirect air carrier.<br>Requires air charter brokers to make certain disclosures.<br>Enumerates certain prohibited unfair and deceptive practices or unfair methods of competition by air charter brokers. |
| 3. Air Ambulance Services | Codifies the exemption authority granted in 1983 to indirect air carriers that provide air ambulance services. |
| 4. Air Services Provided Under Contract with the Federal Government. | Clarifies and codifies that certain air services performed under contract with the Federal government are in common carriage. |

**A. NTSB Recommendation**

As a result of an aircraft accident that involved, among other issues, questions regarding the identity of the operator of the aircraft, on August 4, 2006, the National Transportation Safety Board (NTSB) recommended that the Department require the following information be disclosed to customers and passengers at the time an air charter contract is arranged and anytime thereafter if such information changes: (1) The name of the company in operational control of the aircraft during flight; (2) any other ''doing business as'' names contained in the Operations Specifications of the carrier in operational control during the flight; (3) the name of the aircraft owner; and (4) the names of all brokers involved in arranging the flight (available at *http://www.ntsb.gov/Recs/letters/2006/A06_43.pdf*). In response, on January 26, 2007, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment from interested parties on the recommendations of the NTSB. We received 23 comments on this rulemaking.

Of the 18 comments that touched on the disclosure requirements proposed in the ANPRM, 14 supported requiring disclosure of the entity in operational control of the aircraft during the flight and seven of those comments further supported requiring disclosure of associated ''doing business as'' names. Only one comment supported disclosing the name of the aircraft owner, and that comment suggested that such disclosure should be made only ''upon request'' of the person or entity contracting for air transportation. According to the commenters, owners do not affect the safety of the flight, members of the public might get a false sense of security based on the reputation of the owner of the aircraft, and owners would be less likely to make aircraft available for charter should they not be entitled to privacy. In addition, most commenters opposed the disclosure of the aircraft owner and all brokers involved in arranging the flight, if different from the entity in operational control of the aircraft, primarily on the basis that these entities do not affect the safety of the flight. Four comments objected to any disclosures.

Of the 23 comments, 13 addressed the form in which the disclosures would be made. Of these, five indicated that verbal notice would be sufficient, four indicated that written notice should be required, two indicated that the adequacy of verbal notice would be dependent on the specific situation, and two indicated that an ''express communication'' would be sufficient. ''Express communication'' was not defined.

Aside from the accident that resulted in the recommendation to the Department from the NTSB regarding notice to consumers of the name of the operator of an on-demand charter flight, the Department is aware that on-demand charter operators often ''broker'' or ''sub-service'' a contract for air transportation to another carrier when they are unable to perform the service themselves. There are various reasons why this may occur. For example, a suitable aircraft may be available when the contract for the air service is made with the customer, but may not be available due to mechanical or other reasons at the planned departure time. In other cases, the carrier may not operate the type of aircraft best suited or requested for the flight, but in order not to lose a valued customer or new business, the carrier accepts the contract knowing it will have to find another carrier to operate the flight.

It has been the longstanding policy of the Department in other contexts that it is an unfair and deceptive practice and unfair method of competition for an air carrier or a ticket agent to hold out or sell air transportation on one carrier when the service will be performed by another carrier. (See 14 CFR Part 257, requiring notice of the operating carrier involving scheduled code-share and long-term wet lease operations; see also 14 CFR 380.30 and 380.32, requiring that public charter participants be told the name of the direct carrier operating the charter flight.)

Consumers deserve to be protected in situations in which direct air carriers enter into contracts for air transportation, either (1) intending from the outset to ''broker'' or ''sub-service'' that contract to be operated by another direct air carrier, or (2) subsequent to entering into the contract, out of necessity, needing to broker or sub-service that contract to be operated by another direct air carrier, regardless of the reason for such action. Accordingly, the Department is proposing to amend 14 CFR Part 298 to prohibit air taxis and commuter air carriers from soliciting or executing contracts for single entity charter air transportation to be performed by another carrier without first providing clear and conspicuous written disclosure to the person or entity that contracts for that air transportation of: (1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that carrier holds itself out to the public; (2) the capacity in which the air taxi is acting in contracting for the air transportation; (3) the existence of any corporate or pre-existing business relationship with the direct air carrier that will be in operational control of the aircraft on which the air transportation is to be performed; (4) the make and model of the aircraft to be used for the air transportation (e.g., Learjet 60 XR); (5) the total cost of the air transportation, including any carrier-imposed fees or government-imposed taxes and fees; and (6) the existence of any fees and their amounts, if known, including fuel, landing fees, and aircraft parking or hangar fees, charged by third parties for which the charterer will be responsible for paying directly. If the carrier that is to operate the flight changes after a contract is arranged, this NPRM would require that a written notice be provided to the charterer within a reasonable time after the carrier that contracted with the charter customer learns of the change. A ''reasonable'' time would be enough time for the consumer to make an informed decision as to whether he or she wants to accept the change. For

example, should the carrier to operate the flight change one week before the flight date, the Department would find it ''reasonable'' for notice to be given within 24 hours of the carrier becoming aware of the change. On the other hand, the Department would not find it ''reasonable'' for notice to be given less than two hours before departure in such a circumstance, since that would not give the consumer time to make an informed decision as to whether to accept the change. At that point, the consumer would already be fully prepared for the flight and may in fact already be en route to the airport. The Department asks for comments on whether it should set a specific time limit, e.g., 24 hours, for such notice to be provided. Moreover, we are proposing that the charter customer be entitled to a full refund, at his or her option, if reasonable notice is not given as described above. We are not proposing to require carriers to obtain confirmation from the charter customer of receipt of the notice; however, we ask for comment on whether we should require such confirmation and, if so, what type of confirmation would be appropriate in any given situation, including oral contracts.

We are also proposing to enumerate certain prohibited unfair and deceptive practices or unfair methods of competition by air taxis registered and commuter air carriers. We request comment on whether any of these practices should not be enumerated in the final rule.

We wish to make clear that nothing in this proposal is intended to authorize a direct air carrier to hold out service as a direct air carrier on a specific aircraft, or type of aircraft, that it is not authorized to operate by Department and the Federal Aviation Administration (FAA). This includes holding out large aircraft services when one has authority to operate only small aircraft and holding out scheduled services when one has authority to operate only on-demand services. Such actions always have been, and remain, a violation of the direct air carrier's authority and an unfair and deceptive practice and unfair method of transportation. We invite all interested persons to comment on the issues raised in this notice. Our final action will be based on the comments and supporting evidence filed in this docket and on our own analysis.

**B. New Class of Indirect Air Carriers**

Air charter brokers are persons or companies that do not currently hold DOT economic authority to function either as an indirect air carrier or as a direct air carrier, but that arrange air transportation services for prospective charter customers (charterers) to be provided by direct air carriers. Under current law, since brokers have no authority to hold out air transportation in their own right as a direct or an indirect air carrier, to comply with existing law they must act as the agent of a charterer or the agent of a carrier. Of course, they may also act as a true ''middle-person'' and simply facilitate a contract directly between the charterer and carrier, but such arrangements are, in the Department's experience, the exception rather than the rule. The typical air charter broker operating lawfully today is, under applicable law, a ''ticket agent.'' A ticket agent is defined in 49 U.S.C. 40102(a)(45) as ''a person (except an air carrier, a foreign carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation.''

The increased market for business aviation-related air charters, primarily using small aircraft, along with the growth of the Internet, has, in turn, created a significant growth in the number and role of air charter brokers. In today's business aviation market, air charter brokers increasingly play a role in marketing air transportation services to be operated by direct air carriers and in providing charterers with convenient access to thousands of direct air carriers and a wide range of aircraft. Air charter brokers also often provide charterers with various ancillary services that are not provided by most direct air carriers, such as ground transportation, catering special meals, and general concierge services. The Department has responded to the proliferation of air charter brokers, as described more fully below, by conducting considerable industry outreach to make clear to air charter brokers that they may not mislead the public about their status. In addition, the Department has taken enforcement action against a number of air charter brokers found to have engaged in unfair and deceptive practices and unfair methods of competition.

In order to engage directly or indirectly in air transportation of passengers, a citizen of the United States is required to hold economic authority from the Department pursuant to 49 U.S.C. 41101, or an exemption from that statutory requirement, such as those provided by 14 CFR Part 298 for direct air carriers operating small aircraft, by 14 CFR Part 296 for indirect air carriers that hold out and sell air freight services, and by 14 CFR Part 380 for indirect air carriers that hold out and sell public charter passenger flights. Similarly, persons or entities that are not U.S. citizens are required to hold economic authority under 49 U.S.C. 41301, or an exemption from that statutory requirement, such as those provided by 14 CFR Part 294 to Canadian charter carriers to operate small aircraft, by 14 CFR Part 297 to foreign indirect air carriers to engage in indirect air carriage of cargo, and by 14 CFR Part 380 to foreign indirect air carriers to hold out and sell public charter passenger flights. Indirect air carriers must use direct air carriers that meet the economic licensing requirements of the Department and the appropriate safety certification requirements of the FAA or, if appropriate, a foreign government authority.

The Department, and its predecessor, the Civil Aeronautics Board (CAB), have long sought to permit the marketplace to govern the sale of air transportation, provided appropriate consumer protections are in place. To this end, the Department has authorized various classes of indirect air carriers to engage in air transportation. For example, as described above, in 1977, the Department authorized air freight forwarders by exemption to engage in indirect air carriage of cargo, provided that foreign air freight forwarders first register with the Department and that both U.S. and foreign freight forwarders give consumers certain important notices, including whether they are acting in their individual capacity or as the agent of an airline. (14 CFR Parts 296 and 297.) In 1980, with regard to passenger air transportation, the CAB implemented 14 CFR Part 380 to authorize a class of indirect air carrier called public charter operators to engage in charter air transportation on a per-seat basis. Unlike direct air carriers, public charter operators are not required to undergo fitness determinations examining their financial fitness, managerial competence, and compliance disposition. However, public charter operators must instead comply with strict requirements set forth in Part 380 designed to ensure an adequate level of protection for consumers and their funds. In this regard, for example, public charter operators may not hold out or sell charter flights without first having a contract with a direct air carrier to perform those flights; they must have in place comprehensive financial security measures to protect passenger deposits; they must adhere to certain contract conditions governing important

provisions, such as flight changes or cancellations and refunds; and they must file with and have approved by the Department a prospectus covering each flight in their public charter program. In addition, in 1983, the CAB authorized entities that arranged air ambulance services to operate as indirect air carriers to engage in the sale of air ambulance services provided that they used direct air carriers holding appropriate economic and safety authority. (Order 83–1–36, 99 C.A.B. 801 (1983))

The Department also has always believed that accurate, timely, and clearly presented information is essential so that consumers can make informed decisions about their flight choices. Therefore, the Department has had longstanding, comprehensive rules applicable to ticket agents, including air charter brokers, that prohibit them from, among other things: (1) Misleading the public into believing they are air carriers; (2) misleading the public about the qualifications of pilots or the safety record or certification of air carriers, aircraft, or crew; (3) misleading the public about the quality or kind of service, including the size or type of aircraft and route to be flown; and (4) selling air transportation without a binding commitment with a direct air carrier for that transportation. (14 CFR 399.80.)

In October 2004, in response to the growth in the air charter broker industry and certain problems that accompanied that growth which had come to the Department's attention, including the unlawful holding out of air transportation by air charter brokers, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) issued a notice providing guidance on the lawful role of air charter brokers in providing air transportation. *http://airconsumer.ost.dot.gov/rules/BrokerNoticeFinal.pdf*. That notice reminded air charter brokers that: (1) Without authority, they may not hold out air transportation in their own right or enter as principals into contracts with customers to provide air transportation; and (2) as ticket agents, they may not engage in various practices enumerated in 14 CFR 399.80 as unfair and deceptive or unfair methods of competition, including creating the false impression that they are an air carrier. The Enforcement Office suggested in the guidance that each air charter broker should, in any advertisement of its services, clearly convey the fact that the broker is not a direct air carrier and that the air service advertised will be provided by a properly licensed direct air carrier. Although the guidance recognized the public benefits that could flow where air charter brokers were able to act as a principal in providing air transportation and invited air charter brokers to seek exemptions from existing Department regulations to offer such services, that offer has not proven useful, primarily due to the business model of today's air charter brokers, as described below. Moreover, despite this guidance and continued outreach efforts by Department staff through participation at industry seminars and conferences, as well as through more informal guidance, there have been many instances in which the Department has found it necessary to take enforcement action against air charter brokers for violations of the licensing requirements of 49 U.S.C. 41101 and the prohibition against engaging in unfair and deceptive practices and unfair methods of competition of 49 U.S.C. 41712 and 14 CFR 399.80.

Despite the growth in the marketplace for the services of air charter brokers, the regulations that now exist to authorize indirect air carriers to engage in passenger air transportation are not conducive to the industry served by air charter brokers. In this regard, air charter brokers, particularly those involved with business aviation-related air charters, have not been able to take advantage of the authorizations noted above for other indirect air carriers, a situation that may have stifled innovation and consumer benefits that normally flow from a more open, competitive marketplace. For example, Part 380 has been the only lawful means of offering indirect air transportation services for passengers other than those in need of air ambulance services, but it would be extremely difficult for an air charter broker to comply with that regulation for single entity business-related air charters. In particular, under Part 380 an air charter broker would need to file a prospectus with the Department detailing the charter program and could not vary from the schedule of flights filed without first filing an amendment. In addition, Part 380 dictates the specific terms of the contract of carriage between the passenger and indirect air carrier, such as those involving advertising, delays, cancellations, and refunds, in order to protect passenger expectations. Part 380 also is designed to protect passengers' financial interests as well, through bonding and escrow requirements applicable to public charter operators as well as to the airlines that operate public charter flights.

The business models of the on-demand air charter industry, including the services provided by the majority of air charter brokers that use the services of on-demand air carriers, do not easily fit into the requirements of Part 380. Customers are often businesses or high-net worth individuals, and the flight itinerary is of the customer's choice and the customer can change it at any time, including en route. In addition, other important contract terms, such as aircraft type and charter price, are subject to negotiation. Moreover, unlike the vast majority of airlines operating flights for public charters, which must undergo a stringent fitness test and also escrow charter funds, the fitness and financial protections applicable to the small air carriers operating on-demand charter flights are minimal. In this regard, air taxi operators may operate ''small aircraft'' (those that as originally designed to have 60 passenger seats or fewer or a maximum payload capacity of 18,000 pounds or less) after filing a registration statement with the Department stating that they are a U.S. citizen and have requisite liability insurance and listing the aircraft that they operate. Under Part 298, air taxi operators must provide public notice of their policies on baggage liability and denied boarding compensation. (14 CFR 298.30.) Because of the nature of their business model and the nature and specific provisions of Part 380, air charter brokers cannot reasonably be expected to provide their services under Part 380 or an exemption from certain of its provisions. Accordingly, in recognition of the important public benefits in connection with air transportation that air charter brokers might provide, we are proposing to allow air charter brokers to operate as indirect air carriers, subject to appropriate consumer protection provisions.

More specifically, we are proposing to create a class of indirect air carrier to be named ''air charter brokers'' that are permitted as principals in their own right to engage in single entity charter air transportation aboard large and small aircraft pursuant to exemptions from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation) and to establish rules for the provision of indirect air transportation of passengers by air charter brokers.

The Department also seeks comment on the last clause in the proposed definition of a ''single entity charter'' that would allow individuals who self-aggregate to form a single entity, despite the fact that they may be bearing a portion of the cost of the charter. If the

Department were to accept the definition as it is currently proposed, would it be necessary to change to the definition of single entity charter in 14 CFR Part 212?

Under this proposal, air charter brokers would, in essence, self-identify. In other words, there would be no formal licensing process or registration, as is the case currently with indirect air carriers engaging in air transportation in connection with air ambulance services and U.S. air freight forwarders engaging in the indirect air carriage of cargo. (Nothing in this proposal would apply to persons or entities that, as an employee or *bona fide* agent of an air carrier, hold out, sell, or undertake to arrange air transportation, or as a *bona fide* agent of a charterer, arrange for air transportation for that charterer.) Commenters who do not want the Department to allow air charter brokers to self-identify should propose an alternative and provide information regarding the costs to the government to administer and to air charter brokers to comply with their proposed alternative.

While the Department proposes a system of self-identification for all air charter brokers, we ask whether the Department should adopt a registration system applicable only to non-U.S. citizen air charter brokers, similar to that in place for foreign air freight forwarders, so that the Department can ensure that a grant of such authority to non-U.S. citizens is in the public interest, including consideration of whether there is effective reciprocity in the treatment of U.S. air charter brokers in other countries? Regardless of whether a registration system for non-U.S. air charter brokers is adopted, we are tentatively of the opinion that requiring certain disclosures by all air charter brokers to protect charter customers is in the public interest. In this regard, we propose to require that an air charter broker disclose clearly and conspicuously in any solicitation materials its status and the fact that it is not a direct air carrier and will use an authorized direct air carrier to provide the transportation it offers. We also propose to require that a charterer be informed in writing, prior to purchasing the air transportation, of the following: (1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that carrier holds itself out to the public; (2) the capacity in which the air charter broker is acting in contracting for the air transportation, i.e., as an indirect air carrier, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight; (3) the existence of any corporate or business relationships with a particular direct air carrier(s) that may or will be used for the air transportation; (4) the make and model of the aircraft to be used for the transportation (e.g., Learjet 60 XR); (5) the total cost of the air transportation paid to the air charter broker, including any air charter broker or carrier-imposed fees, or government-imposed taxes and fees; (6) the existence of any fees and their amounts, if known, including fuel, landing fees, and aircraft parking or hangar fees, charged by third parties for which the charterer will be responsible for paying directly; and (7) the existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter flight, and the monetary limits of any such insurance. We ask for comment on whether there is additional information that should be provided to charterers or whether any of the aforementioned information is not essential and need not be provided charterers. For example, we are disposed to conclude, as we have in other contexts, that consumers deserve to know the direct air carrier on which they will be travelling before committing to a charter flight. (See 14 CFR Parts 257 and 380)

Under this NPRM, if any of the seven items listed above that we are proposing that air charter brokers disclose in writing to charter customers prior to purchase changes subsequent to the contract being formed, the air charter broker would be required to provide this new information to the consumer within a reasonable time of such information changing. A ''reasonable'' time would be enough time for the charterer to make an informed decision as to whether he or she wants to accept the change. For example, should the carrier to operate the flight change one week before the flight date, the Department would find it ''reasonable'' for notice to be given within 24 hours of the carrier becoming aware of the change. On the other hand, the Department would not find it ''reasonable'' for notice to be given two hours before departure in such a circumstance, since that would not give the charter customer time to make an informed decision as to whether to accept the change. At that point, the charterer would already be fully prepared for the flight and may in fact already be en route to the airport. The Department asks for comments on whether it should set at specific time limit, e.g., 24 hours, for such notice to be provided.

If reasonable notice is not provided, the consumer would have the option of receiving a full refund if he/she no longer wished to take the flight because of the change. We are not proposing to require air charter brokers obtain confirmation from the charterer of receipt of the notice; however, we ask for comment on whether we should require such confirmation and, if so, what type of confirmation would be appropriate in any given situation, including oral contracts.

With regard to the proposed requirement to provide written notice of the total cost of the air transportation prior to purchase, we recognize that, as is customary in the on-demand charter industry, the ultimate price of the air transportation normally borne by the charterer, including the amount of government taxes and fees applicable to that price, may be dependent on factors whose cost is not known at the time a contract is signed, such as the cost of fuel at the time of travel, aircraft wait time, or aircraft repositioning costs. We propose that, in such an event, the requirement to disclose the ''total'' cost in writing prior to purchase would be considered met so long as the air charter broker conspicuously identifies and discloses the existence of all items that may impact the total cost, including the range of fees associated for each item, as well as any factors which would cause the fees to be in the high or low range. The fare advertising requirements in 14 CFR 399.84 would not apply. We ask for comment on this approach.

In addition, the Department asks for comment on its proposal to subject air charter brokers to 14 CFR Part 374, which implements statutes and regulations governing credit transactions, including those requiring credit card refunds within seven business days of receiving complete documentation. The Department's longstanding policy on cash refunds, which recently was codified with regard to scheduled airlines, requires cash refunds within 20 days of receipt of full documentation of such a request. Should the Department impose similar cash refund requirements in this rule for air charter brokers? If not, what distinguishes the business of air charter brokers that supports their not being required to comply with such refund requirements?

We are also proposing to enumerate certain prohibited unfair and deceptive practices or unfair methods of competition by air charter brokers. We request comment on whether any of these practices should not be enumerated in the final rule.

We are also considering imposing a requirement on air charter brokers to retain certain records for the purpose of

determining regulatory compliance. If so, what specific records should the Department require air charter brokers to retain?

**C. Air Ambulance Services**

Entities that arrange air ambulance services as indirect air carriers have been authorized through a blanket exemption granted in 1983 by the Civil Aeronautics Board to engage in the sale of air transportation in connection with air ambulance services. Order 83–1–36, 99 C.A.B. 801 (1983). The only condition placed to date upon this class of indirect air carrier has been that they use direct air carriers holding appropriate Federal economic and safety authority for such operations.

Over the years, the Department's Aviation Enforcement Office has received informal complaints, primarily from companies involved in the air ambulance industry, regarding the conduct of other individual air ambulance indirect air carriers. Those complaints generally have alleged that an indirect air carrier has misled the public about the nature of its operations, such as inducing the public to believe that it operates aircraft when it does not. Such conduct violates the licensing requirements of 49 U.S.C. 41101 and therefore the exemption authority of Order 83–1–36 and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712. The Department has provided guidance about the role of indirect air carriers providing air ambulance services and has found it necessary to take enforcement action against a number of air ambulance indirect carriers for engaging in the unlawful practices noted above. Similar enforcement action has been taken based on information uncovered during investigations undertaken by the Enforcement Office on its own initiative.

The fundamental nature of these violations stems from the failure of air ambulance indirect air carriers to provide the public information about the nature of their operations in a clear and conspicuous manner. Consumers of the services of air ambulance indirect air carriers deserve no less protection than persons using the services of the air charter brokers. As such, we are proposing to require that indirect air carriers that provide air transportation in connection with air ambulance services ensure appropriate protections for consumers of those services similar to those proposed for air charter brokers.

Specifically, we propose to codify the blanket exemption authority granted air ambulance indirect air carriers by Order 83–1–36 under the new Part 295. Under the proposed rule, the provisions prohibiting unfair and deceptive practices and enumerating specific prohibited practices in section 295.50 would apply to air ambulance indirect air carriers, e.g., misrepresentations that the air charter broker is a direct air carrier. However, air ambulance indirect air carriers would be excluded from the disclosure requirements of section 295.24, e.g., the corporate name of the direct air carrier in operational control of the aircraft. We invite comment on this proposal in general, as well as on whether any of the specific provisions of proposed section 295.24 should apply to indirect air carriers engaged in air ambulance services. Commenters opposed to including air ambulance indirect air carries under proposed Part 295 should be specific as to why the rule or any specific provision contained in the rule, such as the disclosure requirements in section 295.24, should not apply. For example, are there certain types of air ambulance indirect air carriers for which the complying with the disclosure requirements would not be feasible or reasonable given the nature of their operations, e.g., emergency medical evacuations.

**D. Air Services Performed Under Contract With the Federal Government**

This NPRM also addresses air charter broker issues relating to contracts with the Federal government. On November 25, 2009, CSI Aviation Services, Inc., an aviation broker providing services to the Federal government, filed an application for an exemption to permit it to act as a principal in contracts with Federal government agencies. On April 14, 2010, the Department issued a final order exempting CSI and other similarly situated air charter brokers from the requirements of 49 U.S.C. 41101 and applicable Department regulations to the extent necessary for such air charter brokers to engage in domestic and foreign indirect air transportation of persons, property, and mail pursuant to contracts with Federal government agencies arranged under the General Services Administration (''GSA'') Schedule Special Item Number (''SIN'') 599–5, Air Charter Services-Brokers. (Order 2010–4–7, Issued April 13, 2010.) The Department noted that the rulemaking at issue here was being developed, but decided that it was not in the public interest to prohibit air charter brokers from engaging in indirect air transportation under contract with the U.S. Government via the GSA Schedule pending completion of a broader rulemaking proceeding. That exemption authority was subsequently extended in March 2011 for another year. (Department Order 2011–3–8, issued March 3, 2011.)

Then, on April 1, 2011, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its opinion in *CSI Aviation Services, Inc.,* v. *U.S. Dept. of Transportation,* a case involving an air charter broker's challenge to a warning letter from the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office). The Enforcement Office warned the air charter broker that, in its opinion, the air charter broker was unlawfully holding out air transportation by being on a General Service Administration's schedule listing companies as available to contract as principals with Federal government agencies to provide air transportation when it held no economic authority to do so. The court found, among other things, that the Department failed adequately to explain its interpretation of the statutory definition for ''air transportation,'' and, in particular, why it considered CSI's arrangement with GSA to constitute ''common carriage.'' Although the court preliminarily determined that CSI's operation under the GSA schedule arrangement involving only government entities did not appear to be ''common carriage,'' it left open the possibility that the Department may ''reasonably conclude otherwise in the future after demonstrating a more adequate understanding of the statute.'' (*CSI Aviation Services, Inc.,* No. 09–1307, slip op. at 14 (D.C. Cir. April 1, 2011)). We appreciate the Court's advice and take this opportunity to clarify any misunderstanding regarding the matter and to codify, through this rulemaking, the long-standing position of various courts, as followed by the Department and the Civil Aeronautics Board before it and as supported by Congressional intent, that contracting for air transportation with the Federal government, with limited exceptions not applicable to our action here, involves common carriage operations.

As early as 1925, the U.S. Supreme Court held that transportation provided to a Federal government agency amounted to common carriage. *St. Louis, B. & M. RY. CO.* v. *United States, 268 U.S. 169, at 173 (Apr. 27, 1925.)* (''[i]n respect to furnishing transportation, a railroad ordinarily bears to the government the same relation that it does to a private person using its facilities.''). Other Federal courts have made clear that transportation provided under contract with the government is no less common carriage than that provided private

parties. *U.S.A.C. Transport, Inc.,* v. *United States, 203 F.2d 878, at 879 (10th Cir. 1953),* citing *United States* v. *Schupper Motor Lines, Inc., 77 F. Supp. 737 (1948).* Thus, transportation provided for or on behalf of the government, as opposed to transportation provided by the government, amounts to common carriage.

The fact that transportation provided for a government entity amounts to common carriage is also seen in the longstanding policies and regulations of the Department and the CAB before it. In this regard, 14 CFR Part 212 provides non-safety related rules applicable to U.S. and foreign direct air carriers operating passenger or cargo charter flights in air transportation. ''Air transportation'' includes the transportation of passengers by air as a ''common carrier'' between places in different states or between a place in the United States and a place outside the United States. (49 U.S.C. 40102(a)(5), (a)(23), and (a)(25)) In the context of aviation, a ''common carrier'' is a person or other entity that, for compensation or hire, holds out or provides to the public transportation by air between two points. (*Woolsey* v. *NTSB,* 993 F.2d 516, 522–23 (5th Cir. 1993)) Section 212.4(b)(2) of the Department's regulations, 14 CFR 212.4(b)(2), specifically authorizes certificated and foreign air carriers to conduct single entity charters pursuant to contracts with the Department of Defense (DOD). The substantive requirements of section 212.4(b)(2) were originally established in 1966 when the CAB revised its economic regulations to set forth the terms, conditions, and limitations for the conduct of ''certificated supplemental air transportation,'' which was defined, in essence, to mean charter trips in air transportation pursuant to a certificate of public convenience and necessity. In the final rule, the CAB defined the term ''charter flight'' to include ''[a]ir transportation of persons and/or property pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department.'' *31 FR 4771,* March 22, 1966. Clearly the CAB and the Department, as well as the DOD, considered contracts with that agency to amount to common carriage operations to be regulated by the Department to the extent necessary.

Support for this conclusion is also found in the Department's regulations at 14 CFR Parts 241 and 298 that require reporting of operations in air transportation and foreign air transportation by airlines. There is a special category in Part 241 for reporting of ''Nonscheduled Military Passenger/Cargo'' and ''Nonscheduled Military Cargo'' operations by large certificated air carriers (14 CFR Part 241, Sec. 19–4) and the Department requires certificated air carriers, as well as air taxi and commuter air carriers to report, in these special categories, domestic and international military operations. (14 CFR Part 241, Sec 19–6 and 14 CFR 298.70, respectively) It is axiomatic that only flights in common carriage and therefore under the Department's jurisdiction are subject to its reporting requirements.

Support for the conclusion that contracts with the Federal government for air transportation constitute common carriage is also found in Congressional action. In this regard, the ''Fly America Act'' requires that U.S. government agencies shall ensure that government financed air transportation is provided by ''an air carrier holding a certificate under 49 U.S.C. 41102.'' (49 U.S.C. 40118) The original text of the statute when it first became law in 1975 states that Federal agencies shall ''procure, contract for, or otherwise obtain'' air transportation provided by ''air carriers holding certificates under section 401 of the [Federal Aviation Act] to the extent authorized by such certificates or by regulations or exemption of the Civil Aeronautics Board . . .'' *International Air Transportation Fair Competitive Practices Act of 1974* (Pub. L. 93–624, Jan. 3, 1975). Although the text of the statute has been substantially amended since 1975, it has retained the essential requirement that government funded air transportation must be provided by a certificated ''air carrier,'' which is a statutorily defined term—''a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation'' (49 U.S.C. 40102(a)(2))—applicable only in the context of common carriage. Congress clearly envisioned that contracts with the government for air transportation are in common carriage. Had it thought otherwise, Congress could have used a broader term in the Fly America Act in place of ''air carrier,'' such as ''aircraft operated by a U.S. citizen,'' which would have covered both common carriage and private carriage, yet still achieve the main purpose of the Fly America Act. Congress chose not to do so, indicating that it was mindful of the difference between common carriage, requiring adherence to economic licensing requirements and the highest level of safety, and private carriage, which has no economic licensing requirements and is not required to meet the same higher safety standards required of common carriers.

We are therefore taking this opportunity to reemphasize the Department's longstanding determination that contracts with the Federal government arranged under the GSA Schedule involving government entities are in fact in ''common carriage'' and subject to the Department's jurisdiction and to codify that such contracts arranged by air charter brokers also involve common carriage by including such a provision in our proposed rule on air charter brokers. In addition, in keeping with Congressional intent that government financed air transportation be provided by an air carrier holding a certificate under 49 U.S.C. 41102 or an exemption from that provision, we are proposing to require that all contracts for air transportation with government entities arranged by air charter brokers through the GSA Schedule must comply with the Fly America requirements of 49 U.S.C. 40118. Failure to comply with this requirement would be cause to revoke an air charter broker's authority on public interest grounds.

## Regulatory Analysis and Notices

### A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined not to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has not been reviewed by the Office of Management and Budget under that Executive Order. The Regulatory Evaluation finds that the benefits for the proposed rule exceed its costs. The passenger benefits from the proposed requirements are not possible to quantify. The value of this rulemaking would be the increased transparency for both the public and competitors in this market. There is also value in the timely and accurate production of information to aid in consumer decision-making, but this also cannot be quantified. The baseline or midrange estimate of costs incurred by air charter brokers and carriers over a 20-year period at a 7 percent discount rate is $1.256 million. More detail on the estimates can be found in the preliminary Regulatory Impact Analysis associated with this proposed rule.

### B. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any

regulation that has substantial direct effects 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. It does not propose any regulation that imposes substantial direct compliance costs on State and local governments. It does not propose any regulation that preempts state law, because States are already preempted from regulating in this area under the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

**C. Executive Order 13084**

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

**D. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. It requires that agencies review regulations that may have a significant economic impact on a substantial number of small entities, and if possible to fit regulatory and informational requirements to the scale of the entities subject to regulation. However, if it is determined that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Our analysis identified a total of 2,121 small direct air carriers (i.e., U.S. air carriers that provide air transportation exclusively with aircraft that seat no more than 60 passengers) that could potentially be affected by the requirements of this NPRM. In addition, we are treating all the indirect air carriers (i.e., air charter brokers including those that provide air ambulance services) as small entities. The criteria for identifying small business entities are provided by the Small Business Administration in its publication, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes.* These size standards are customarily based on an entity's gross receipts or its employment. There is no North American Industry Classification System (NAICS) code for air charter brokers. Industries that are similar to air charter brokers are *Nonscheduled chartered passenger air transportation* (NAICS code 481211), *Travel agencies* (NAICS code 561510) and *All other travel arrangements and reservations services* (NAICS code 561599). It is important to note that firms in NAICS code 481211 provide transportation services, while air charter brokers do not. If air charter brokers were treated as analogous to these firms, all air charter brokers would be small entities.

The Department believes that the cost impact of this rulemaking on air taxis is *de minimis,* since the only requirement in this NPRM that would mandate affirmative action on their part is a disclosure requirement.

With regard to air charter brokers, there are three requirements that would apply to them. Two of these requirements involve disclosure. First, in their solicitations and advertising materials, the NPRM would require air charter brokers to disclose certain information in writing to consumers. Second, before entering into contracts for a flight or series of flights, the NPRM would require air charter brokers to disclose certain additional information. The third, the NPRM would mandate that air charter brokers make prompt refunds of monies paid for single entity charter air transportation when such refunds are due.

The Department does not consider this cost to be significant, especially since a sizeable part of the air charter broker industry already makes such disclosures as part of current business practice. As a result, the Department certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Department requests comments from affected entities on this finding and determination.

**E. Paperwork Reduction Act**

This NPRM does not propose any new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. § 3501 *et seq.*).

**F. Unfunded Mandates Reform Act**

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this notice.

**List of Subjects**

*14 CFR Part 295*

Air charter brokers.

*14 CFR Part 298*

Exemptions for air taxi and commuter air carrier operations.

Issued this 11th day of September, 2013 at Washington, DC, under authority delegated in 49 CFR part 1.27.

**Kathryn B. Thomson,**

*Acting General Counsel.*

Accordingly, 14 CFR chapter II is proposed to be amended as follows:

■ 1. A new Part 295 is added to read as follows:

## PART 295—AIR CHARTER BROKERS

Sec.

**Subpart A—General**

295.1 Purpose.
295.3 Applicability.
295.5 Definitions.

**Subpart B—Exemption Authority**

295.10 Grant of economic authority; exemption from the Statute.
295.12 Suspension or revocation of exemption authority.
295.17 Contract with government entities.

**Subpart C—Consumer Protection**

295.20 Use of duly authorized direct air carriers.
295.22 Misrepresentations.
295.24 Disclosures.
295.26 Refunds.

**Subpart D—Violations**

295.50 Unfair and deceptive practices and unfair methods of competition.
295.52 Enforcement.

**Authority:** 49 U.S.C. Chapters 401, 411, 413, and 417.

### Subpart A—General

**§ 295.1 Purpose.**

This part creates a new class of indirect air carrier—air charter brokers—to provide indirect air transportation of passengers on single entity charters aboard large and small aircraft by granting exemptions to such air charter brokers from certain provisions of Subtitle VII of Title 49 of the United States Code (Transportation), and establishes rules, including consumer protection provisions, for the provision of such air transportation by air charter brokers.

**§ 295.3 Applicability.**

(a) This part applies to any person or entity acting as an air charter broker as defined in this part with respect to single entity charter air transportation that the air charter broker, as a principal in its own right, holds out, sells or undertakes to arrange aboard large and small aircraft. Except for the disclosure requirements found at 295.24, this part also applies to persons or entities authorized by Civil Aeronautics Board Order 83–1–36 to engage in air transportation as indirect air carriers in connection with air ambulance services and described in that order as air ambulance operators.

(b) This part does not apply to a person or entity that, as an employee or as a *bona fide* agent of an air carrier, holds out, sells, or undertakes to arrange air transportation. This part does not apply to a person or entity acting as the *bona fide* agent of a charterer in arranging for air transportation for that charterer. This part does not authorize air charter brokers to hold out, sell, or undertake to arrange scheduled air transportation in their individual capacity or on behalf of air carriers.

**§ 295.5 Definitions.**

For the purposes of this part:

(a) *Air transportation* means interstate or foreign air transportation, as defined in 49 U.S.C. 40102(5), 40102(23), and 40102(25).

(b) *Air charter broker* means a person or entity that holds out, sells, or undertakes to arrange planeload, single entity passenger charter air transportation, other than as an employee or *bona fide* agent of an air carrier or a charterer, using a direct air carrier, or using another provider of air transportation.

(c) *Charterer* means the person or entity that contracts with an air charter broker for the transportation of the passengers flown on a charter flight.

(d) *Charter air transportation* means charter flights in air transportation and foreign air transportation authorized under Part A of Subtitle VII of Title 49 of the United States Code.

(e) *Direct air carrier* means a U.S. or foreign air carrier that provides or offers to provide air transportation and that has control over the operational functions performed in providing that transportation.

(f) *Indirect air carrier* means a person or entity that, as a principal, holds out, sells, or arranges air transportation and separately contracts with direct air carriers or other providers to perform such air transportation.

(g) *Single entity charter* means a charter for the entire capacity of the aircraft, the cost of which is borne by the charterer and not directly or indirectly by individual passengers, except in cases in which individual passengers self-aggregate to form a single entity.

(h) *Statute* means Subtitle VII of Title 49 of the United States Code (Transportation).

(i) *Large aircraft* means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(j) *Small aircraft* means any aircraft originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less.

## Subpart B—Exemption Authority

**§ 295.10 Grant of economic authority; exemption from the statute.**

To the extent necessary to permit air charter brokers to hold out, sell, or undertake to arrange single entity charter air transportation, air charter brokers are exempted from the following provisions of Subtitle VII of Title 49 of the United States Code, except for the provisions noted below, only if and so long as they comply with the provisions and the conditions imposed by this part: Chapter 411, Chapter 413, Chapter 415, and Chapter 419. Air charter brokers are not exempt from the following provisions: Section 41310 (nondiscrimination) with respect to foreign air transportation.

**§ 295.12 Suspension or revocation of exemption authority.**

The Department reserves the power to suspend or revoke the exemption authority of any air charter broker, without a hearing, if it finds that such action is necessary in the public interest or is otherwise necessary in order to protect the traveling public.

**§ 295.17 Contracts with government entities.**

Contracts by air charter brokers with the Federal government arranged under the GSA Schedule for air transportation are in common carriage and must meet the requirements of 49 U.S.C. 40118.

## Subpart C—Consumer Protection

**§ 295.20 Use of duly authorized direct air carriers.**

Air charter brokers are not authorized under this part to hold out, sell, or otherwise arrange charter air transportation to be operated by a person or entity that does not hold the requisite form of economic authority from the Department and appropriate safety authority from the Federal Aviation Administration and/or, if applicable, a foreign safety authority. Air charter brokers are not authorized under this part to hold out air transportation to be performed by a direct air carrier that the direct air carrier would not in its own right be able to hold out.

**§ 295.22 Prohibited unfair and deceptive practices and unfair methods of competition.**

An air charter broker or foreign air charter broker shall not engage in any unfair or deceptive practice or unfair method of competition.

**§ 295.24 Disclosures.**

(a) All solicitation materials and advertisements, including Internet Web pages, published or caused to be published by air charter brokers shall clearly and conspicuously state that the air charter broker is an air charter broker, and that it is not a direct air carrier in operational control of aircraft, and that the air service advertised will be provided by a properly licensed direct air carrier.

(b) Before entering into a contract for a specific flight or series of flights, air charter brokers must disclose the following information in writing to the charterer, which may be accomplished through electronic transmissions. If the transaction occurs orally, the following information must be disclosed orally, and again in any written correspondence, including correspondence confirming the purchased air transportation.

(1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed and any other names in which that direct air carrier holds itself out to the public.

(2) The capacity in which the air charter broker is acting in contracting for the air transportation, i.e., as an indirect air carrier, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight.

(3) The existence of any corporate or business relationship between the air charter broker and the direct air carrier that will be used for the air transportation.

(4) The make and model of the aircraft to be used for the transportation (e.g., Learjet 60 XR).

(5) The total cost of the air transportation paid to the air charter broker, including any air charter broker or carrier-imposed fees, or government-imposed taxes and fees.

(6) The existence of any fees and their amounts, if known, including fuel,

landing fees, and aircraft parking or hangar fees, charged by third parties for which the charterer will be responsible for paying directly.

(7) The existence or absence of liability insurance held by the air charter broker covering the charterer and passengers and property on the charter flight, and the monetary limits of any such insurance.

(c) If the information required to be disclosed in paragraph (b) of this section is not known at the time the contract is entered into, air charter brokers must provide the information in paragraph (b) of this section to the charterer within a reasonable time after such information becomes available.

(d) If the information in paragraph (b) of this section is not provided to the charterer within a reasonable time after becoming available, air charter brokers must provide the charterer with the opportunity to cancel the contract for air transportation, including any services in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services.

(e) In all circumstances, air charter brokers must disclose the information in paragraph (b) of this section to the charterer prior to the start of the air transportation.

(f) If the information in paragraph (b) of this section changes after the air transportation covered by the contract has begun, air charter brokers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available.

(g) If the changes in information described in paragraph (f) of this section are not provided to the charterer within a reasonable time after becoming available, air charter brokers must provide the charterer with the opportunity to cancel the remaining portion of the contract for air transportation, including any services paid in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services not yet provided.

### § 295.26 Refunds.

Air charter brokers must make prompt refunds of all monies paid for charter air transportation when such transportation cannot be performed or when such refunds are otherwise due, as required by 14 CFR 374.3 and 12 CFR Part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases.

## Subpart D—Violations

### § 295.50 Unfair and deceptive practices and unfair methods of competition.

(a) Violations of this Part shall be considered to constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. 41712.

(b) In addition to paragraph (a) of this section, the following enumerated practices, among others, by an air charter broker or foreign air charter broker are unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. 41712:

(1) Misrepresentations that may induce members of the public to reasonably believe that the air charter broker or foreign air charter broker is a direct air carrier.

(2) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the air charter broker, in advertisements, on or in places of business, or on or in aircraft or any other place in connection with the name of an air carrier or with services in connection with air transportation, in such manner that it may mislead or confuse the traveling public with respect to the status of the air charter broker.

(3) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(4) Misrepresentations as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(5) Misrepresentations that passengers are directly insured when they are not so insured. For example, where the only insurance in force is that protecting the air carrier in event of liability.

(6) Misrepresentations as to fares, charges, or special priorities for air transportation or services in connection therewith.

(7) Misrepresentations as to membership or involvement with a particular organization that audits air charter brokers or direct air carriers, or that the air charter broker or any direct air carriers to be used for a particular flight meets a particular standard set by an auditing organization.

(8) Representing that a contract for a specified direct air carrier, aircraft, space, flight, or time, has been arranged, without a binding commitment with a direct air carrier for the furnishing of such definite reservation or charter as represented.

(9) Selling or contracting for air transportation while knowing or having reason to know or believe that such air transportation cannot be legally performed by the entity that is to operate for the air transportation.

(10) Misrepresentations as to the requirements that must be met by charterers in order to qualify for charter flights.

### § 295.52 Enforcement.

In case of any violation of any of the provisions of the Statute, or of this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding under section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. District Court, as the case may be, to compel compliance. The violator may also be subject to civil penalties under the provisions of section 46301 of the Statute, or other lawful sanctions, including revocation of the exemption authority granted in this part. In the case of a willful violation, the violator may be subject to criminal penalties under the provisions of section 46316 of the Statute.

## PART 298—[AMENDED]

■ 2. The authority citation for 14 CFR Part 298 continues to read as follows:

**Authority:** 49 U.S.C. 41102, 41708, and 41709.

■ 3. A new § 298.90 is added to read as follows:

### § 298.90 Disclosures.

(a) Air taxi operators or commuter air carriers are prohibited from contracting with charterers for charter flights that will be operated by another direct air carrier without first clearly and conspicuously disclosing in writing to the charterer that the flight will be operated by another direct air carrier and providing the following disclosures to the charterer:

(1) The corporate name of the direct air carrier in operational control of the aircraft on which the air transportation is to be performed, and any other names in which that direct air carrier holds itself out to the public.

(2) The capacity in which the air taxi operator or commuter air carrier is acting in contracting for the air transportation, i.e., as a principal, as an agent of the charterer, or as an agent of the direct air carrier that will be in operational control of the flight.

(3) The existence of any corporate or business relationship between the air taxi operator or commuter air carrier

and the direct air carrier that will be in operational control of the charter flight.

(4) The make and model of the aircraft to be used for the transportation (e.g., Learjet 60 XR).

(5) The total cost of the air transportation, including any carrier-imposed fees or government-imposed taxes and fees.

(6) The existence of any fees and their amounts, if known, including fuel, landing fees, and aircraft parking or hangar fees charged by third-parties for which the charterer will be responsible for paying directly.

(b) If the information required to be disclosed in paragraph (a) of this section is not known at the time the contract is entered into, air taxi operators or commuter air carriers must provide in writing the information in paragraph (a) of this section to the charterer within a reasonable time after such information becomes available.

(c) If the information in paragraph (a) of this section is not provided to the charterer within a reasonable time after becoming available, air taxi operators or commuter air carriers must provide the charterer with the opportunity to cancel the contract for air transportation, including any services in connection with such contract, and receive a full refund of any monies paid for the charter air transportation and services.

(d) In all circumstances, air taxi operators or commuter air carriers must disclose the information in paragraph (a) of this section to the charterer prior to the start of the air transportation.

(e) If the information required to be disclosed in paragraph (a) of this section changes after the air transportation covered by the contract has begun, air taxi operators or commuter air carriers must provide information regarding any such changes to the charterer within a reasonable time after such information becomes available.

(f) If the changes in information described in paragraph (e) of this section are not provided to the charterer within a reasonable time after becoming available, air taxi operators or commuter air carriers must provide the charterer with the opportunity to cancel the remaining portion of the contract for air transportation, including any services paid for in connection with such contract, and receive a full refund of any monies paid the charter air transportation and services not yet provided.

■ 4. A new § 298.100 is added to read as follows:

**§ 298.100 Prohibited unfair and deceptive practices and unfair methods of competition.**

An air taxi or commuter air carrier subject to this part shall not engage in any unfair or deceptive practices or unfair method of competition in holding out, selling, or operating charter flights. The following enumerated practices, among others, by an air taxi or commuter air carrier are unfair or deceptive practices or unfair methods of competition:

(a) Misrepresentations that may induce members of the public to reasonably believe that the air taxi or commuter air carrier will be, or is, in operational control of a flight when that is not the case.

(b) Misrepresentations as to the quality or kind of service, type or size of aircraft, and points served.

(c) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentations that passengers are directly insured when they are not so insured. For example, where the only insurance in force is that protecting the air taxi or commuter air carrier in the event of liability.

(e) Misrepresentations as to fares, charges, or special priorities for air transportation or services in connection therewith.

(f) Representing that a contract for specified direct air carrier, aircraft, space, flight, or time, has been arranged, without a binding commitment with a direct air carrier for the furnishing of such definite reservation or charter as represented.

(g) Selling or contracting for air transportation while knowing or having reason to know or believe that such air transportation cannot be legally performed by the entity that is to operate the air transportation.

[FR Doc. 2013–23142 Filed 9–27–13; 8:45 am]

BILLING CODE 4910–9X–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 201, 203, 1005, and 1007

**[Docket No. FR 5707–P–01]**

**RIN 2502–AJ18**

### Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages

**AGENCY:** Office of Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created new section 129C in the Truth-in-Lending Act (TILA), which establishes minimum standards for considering a consumer's repayment ability for creditors originating certain closed-end, dwelling-secured mortgages, and generally prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good-faith determination of a consumer's ability to repay the loan according to its terms. Section 129C provides lenders more certainty about meeting the ability-to-repay requirements when lenders make ''qualified mortgages,'' which are presumed to meet the requirements. Section 129C authorizes the agency with responsibility for compliance with TILA, which was initially the Federal Reserve Board and is now the Consumer Financial Protection Bureau (CFPB), to issue a rule implementing these requirements. The CFPB has issued its rule implementing these requirements, referred to throughout this proposed rule as the CFPB final rule.

The Dodd-Frank Act also charges HUD and three other Federal agencies with prescribing regulations defining the types of loans that these Federal agencies insure, guarantee, or administer, as applicable, that are qualified mortgages. Through this proposed rule, HUD submits for public comment its definition of ''qualified mortgage'' for the types of loans that HUD insures, guarantees, or administers that aligns with the statutory ability-to-repay criteria of TILA and the regulatory criteria of the CFPB's definition, without departing from HUD's statutory missions. In this rulemaking, HUD proposes that any forward single family mortgage insured or guaranteed by HUD shall meet the criteria of a qualified mortgage, as defined in this rule, and HUD seeks comment on all components of its definition.

**DATES:** *Comment Due Date:* October 30, 2013.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to

the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the proposed rule.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michael P. Nixon, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410; telephone number 202–402–5216, ext. 3094 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

### *A. Purpose of the Regulatory Action*

This rulemaking commences the process by which HUD will meet its charge under TILA, as amended by the Dodd-Frank Act, to define, in regulation, the term ''qualified mortgage'' for the single family residential mortgages and loans that HUD insures, guarantees, or otherwise administers. While the CFPB, in accordance with statutory direction, has defined, through rulemaking, the term ''qualified mortgage'' for the broader single family mortgage market, HUD must define this term for use in its own single family insured or guaranteed mortgage programs.

The statutory purpose of defining ''qualified mortgage,'' whether for the conventional mortgage market or for specific Federal programs, as specified in the Dodd-Frank Act, is to identify single family residential mortgages that take into consideration a borrower's ability to repay the loans and provide certain protections for the lender from liability. During the years preceding the mortgage crisis, too many mortgages were made to borrowers without regard to their ability to repay the loan and included risky features such as ''no doc'' loans or ''interest only'' loans. As a result, many homeowners defaulted on these loans and faced foreclosure, causing a collapse in the housing market in 2008 and leading to the Nation's most serious financial crisis since the Great Depression.

In developing a proposed definition of qualified mortgage, HUD reviewed its mortgage insurance and loan guarantee programs and determined that all of the single family residential mortgage and loan products offered under HUD programs are qualified mortgages; that is, they exclude risky features and are designed so that the borrower can repay the loan. However, for certain of its mortgage products, HUD proposes qualified mortgage standards similar to those established by the CFPB in its definition of ''qualified mortgage.''

### *B. Summary of the Major Provisions of the Regulatory Action*

In defining ''qualified mortgage'' in its rulemaking, the CFPB established both a safe harbor and a rebuttable presumption of compliance for transactions that are qualified mortgages. The label of safe harbor qualified mortgage is applied to those mortgages that are not higher-priced covered transactions (that is the annual percentage rate does not exceed the average prime offer rate by 1.5 percent). These are considered to be the least risky loans and presumed to have conclusively met the ability-to-repay requirements of TILA. The label of rebuttable presumption qualified mortgage is applied to those mortgages that are higher-priced transactions.

HUD proposes to designate Title I (home improvement loans), Section 184 (Indian housing loans), and Section 184A (Native Hawaiian housing loans) insured mortgages and guaranteed loans covered by this rulemaking to be safe harbor qualified mortgages and HUD proposes no changes to the underwriting requirements of these mortgage and loan products. However, for its largest volume of mortgage products, those insured under Title II of the National Housing Act, HUD proposes two categories of qualified mortgages similar to the two categories created in the CFPB final rule—a safe harbor qualified mortgage and a rebuttable presumption qualified mortgage.

The rulemaking proposes to define safe harbor qualified mortgage as a mortgage insured under Title II of the National Housing Act (with the exception of reverse mortgages insured under section 255 of this act) that meets the points and fees limit adopted by the CFPB in its regulation at 12 CFR 1026.43(e)(3), and that has an annual percentage rate for a first-lien mortgage relative to the average prime offer rate that is less than the sum of the annual mortgage insurance premium and 1.15 percentage points. HUD proposes to define a rebuttable presumption qualified mortgage as a single family mortgage insured under Title II of the National Housing Act (with the exception of reverse mortgages insured under section 255 of this act) that meets the points and fees limit adopted by the CFPB in its regulation at 12 CFR 1026.43(e)(3), but has an annual percentage rate that exceeds the average prime offer rate for a comparable mortgage, as of the date the interest rate is set, by more than the sum of the annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage.

HUD requires that all loans be insured under Title II of the National Housing Act in order to be either a rebuttable presumption or safe harbor qualified mortgage, and that they meet the CFPB's points and fees limit at 12 CFR 1026.43(e)(3). The CFPB set a three percent points and fees limit for its definition of qualified mortgage and allowed for adjustments of this limit to facilitate the presumption of compliance for smaller loans.

As more fully discussed later in this preamble, HUD's proposal to establish

two categories of qualified mortgages for the majority of National Housing Act mortgages is to maintain consistency with the TILA statutory criteria defining qualified mortgage, as well as the CFPB's definition, to the extent consistent with the National Housing Act. HUD specifically seeks comment on its proposed two categories.

*C. Costs and Benefits*

The impacts of HUD's proposed rule are relatively small. HUD's proposed rule in effect reclassifies a sizeable group (about 19 percent) of Title II loans insured under the National Housing Act from rebuttable presumption qualified mortgages under the CFPB final rule to safe harbor qualified mortgages under HUD's proposed rule. A small number (about 7 percent) of Title II loans would continue to not qualify as qualified mortgages based on the points and fees limit, while the remaining Federal Housing Administration (FHA) loans (about 74 percent) would qualify for qualified mortgage status with a safe harbor presumption of compliance with the ability-to-repay requirements under both the CFPB final rule and HUD's proposed rule. The Title II loans that would be nonqualified mortgages under the CFPB's rule would remain non-qualified mortgages under the proposed rule. The difference is that HUD, through this rulemaking, will no longer insure loans with points and fees above the CFPB level for qualified mortgages, but expects that these loans will adapt to meet the points and fees limit. In addition, HUD classifies all Title I, Section 184 and Section 184A insured mortgages and guaranteed loans, which most likely would have been nonqualified mortgages under the CFPB final rule, as safe harbor qualified mortgages.

As a result of these reclassifications, lenders face lower costs of compliance under HUD's qualified mortgage rule than under the CFPB final rule and therefore receive incentives to continue making these loans without having to pass on their increased compliance costs to borrowers. While borrowers benefit from not having to pay for the higher lender costs, they also face less opportunity to challenge the lender with regard to ability to repay. HUD expects that almost all borrowers will gain from the reduction in litigation and that the reduction of the interest rate will compensate for the loss of the option to more easily challenge a lender. As a result of the reclassification of some HUD loans, the maximum expected impact of the proposed rule would be an annual reduction of lender legal costs by $41 million.

**II. Background**

New section 129C(a) of TILA, added by section 1411 of subtitle B of Title XIV of the Dodd-Frank Act (Pub. L. 111–203, 124 Stat. 1736, approved July 21, 2010), provides minimum standards for considering a consumer's ability to repay a residential mortgage. New section 129C(b), added by section 1412 of the Dodd-Frank Act, establishes the presumption that the ability-to-repay requirements of section 129C(a) are satisfied if a mortgage is a ''qualified mortgage,'' and authorizes, initially, the Federal Reserve Board and, ultimately, the CFPB, to prescribe regulations that revise, add to, or subtract from the criteria in TILA that define a ''qualified mortgage.''

Section 129C(b)(2)(A) defines qualified mortgage as a mortgage that meets the following requirements: (i) The transaction must have regular periodic payments; (ii) the terms of the mortgage must not result in a balloon payment; (iii) the income and financial resources of the mortgagor are verified and documented; (iv) for a fixed rate loan, the underwriting process fully amortizes the loan over the loan term; (v) for an adjustable rate loan, the underwriting is based on the maximum rate permitted under the loan during the first 5 years and includes a payment schedule that fully amortizes the loan over the loan term; (vi) the transaction must comply with any regulations established by the CFPB relating to ratios of total monthly debt to total monthly income; (vii) the total points and fees payable in connection with the loan must not exceed 3 percent of the total loan amount; and (viii) the mortgage must not exceed 30 years, except in specific areas.[1]

New section 129C(b)(3)(B)(ii), also added by section 1412, requires that HUD, the Department of Veterans Affairs (VA), the Department of Agriculture (USDA), and the Rural Housing Service (RHS), prescribe rules in consultation with the Federal Reserve Board[2] to define the types of loans they insure, guarantee, or administer, as the case may be, that are ''qualified mortgages,'' and revise, add to, or subtract from the statutory criteria used to define a qualified mortgage.

The Federal Reserve Board published a proposed rule on May 11, 2011, at 76 FR 27390, entitled, ''Regulation Z; Truth in Lending,'' in conformance with amendments to section 129C of TILA. On July 21, 2011, rulemaking authority under TILA transferred from the Federal Reserve Board to the CFPB. The CFPB published a final rule on January 30, 2013, at 78 FR 6408, entitled, ''Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z),'' which has been referred to in this preamble as the CFPB final rule. This final rule implemented section 129C(b) by defining ''qualified mortgage'' with two degrees of protections for creditors and assignees of a qualified mortgage. The CFPB's regulations implementing section 129C(b) are codified at 12 CFR part 1026.

The CFPB's regulations at 12 CFR 1026.43(e)(2) adopt in part the statutory qualified mortgage definition, and require that a mortgage meet 6 general requirements: (i) The transaction must have regular periodic payments;[3] (ii) the mortgage must not exceed 30 years;[4] (iii) the points and fees paid in connection with a loan greater than or equal to $100,000 does not exceed 3 percent of the total loan amount, with a higher amount allowed for loans under $100,000;[5] (iv) the creditor must underwrite the loan taking into account the monthly payment for mortgage-related obligations;[6] (v) the creditor must consider and verify income and debt;[7] and (vi) the ratio of the consumer's monthly debt to total monthly income must not exceed 43 percent.[8]

The limit on points and fees is defined in 12 CFR 1026.43(e)(3) and the definition of points and fees is set out at 12 CFR 1026.32(b)(1). The total amount of points and fees for loans

[1] Section 129C also provides for a reverse mortgage to be a qualified mortgage if the mortgage meets the CFPB's standards for a qualified mortgage except to the extent that reverse mortgages are statutorily exempted altogether from the ability-to-repay requirements. The CFPB's regulations provide that the ability-to-repay requirements of section 129C(a) do not apply to reverse mortgages. In the preamble to its final rule published on January 30, 2013, the CFPB states: ''The Bureau notes that the final rule does not define a 'qualified' reverse mortgage. As described above, TILA section 129C(a)(8) excludes reverse mortgages from the repayment ability requirements. See section-by-section analysis of § 1026.43(a)(3)(i). However, TILA section 129C(b)(2)(ix) provides that the term 'qualified mortgage' may include a 'residential mortgage loan' that is 'a reverse mortgage which meets the standards for a qualified mortgage, as set by the Bureau in rules that are consistent with the purposes of this subsection.' The Board's proposal did not include reverse mortgages in the definition of a 'qualified mortgage.' '' (See 78 FR 6516.)

[2] Rulemaking authority under TILA has since been transferred to the CFPB.

[3] 129C(b)(2)(A)(i).

[4] 129C(b)(2)(A)(viii).

[5] 129C(b)(2)(A)(vii) (limiting total points and fees payable in connection with the loan to 3 percent of the total loan amount).

[6] 129C(b)(2)(A)(iv)–(v).

[7] 129C(b)(2)(A)(iii).

[8] 129C(b)(2)(A)(vi) (directing compliance ''with any guidelines or regulations established by the Board relating to ratios of total monthly debt to total monthly income or alternative measures . . .'').

greater than or equal to $100,000 (indexed for inflation) must not exceed 3 percent of the total loan amount. For a loan amount greater than or equal to $60,000 but less than $100,000, the points and fees must not exceed $3,000; for a loan amount greater than or equal to $20,000 but less than $60,000, the points and fees must not exceed 5 percent of the total loan amount; for a loan amount greater than or equal to $12,500 but less than $20,000, the points and fees must not exceed $1,000; and for a loan amount less than $12,500, the points and fees must not exceed 8 percent of the total loan amount.

The CFPB final rule creates both a safe harbor and a rebuttable presumption of compliance for transactions that are ''qualified mortgages.'' Section 129C(b) of TILA provides a presumption that a qualified mortgage has met the ability-to-repay requirements. However, as the CFPB noted in its final rule, ''the statute is not clear as to whether that presumption is intended to be conclusive so as to create a safe harbor that cuts off litigation or a rebuttable presumption of compliance with the ability-to-repay requirements.'' [9] The CFPB's analysis of the statutory construction and policy implications demonstrates that there are sound reasons for adopting either interpretation.[10] Given the statutory ambiguity, the CFPB adopted both a safe harbor and rebuttable presumption standard, exercising its authority under section 129C(b)(3)(B) of TILA to revise, add to, or subtract from the qualified mortgage criteria upon finding that the changes further the purposes of sections 129B and 129C. The CFPB's analysis found that the use of a safe harbor and a rebuttable presumption standard best promoted the various policy goals of the statute.[11]

A ''qualified mortgage'' falls into the safe harbor category and is conclusively presumed to have met the ability-to-repay requirements if it is not a ''higher-priced covered transaction.'' The safe harbor presumption was established to limit ability to repay challenges on mortgages that are considered to be the least risky.[12] Consumers can only challenge loans in this category by showing that the loans do not meet the definition of a ''qualified mortgage.'' A ''qualified mortgage'' that is a higher-priced covered transaction has only a rebuttable presumption of compliance with the ability-to-repay requirement, even though each element of the ''qualified mortgage'' definition is met. *See* 12 CFR 1026.43(e)(1)(ii)(B). A ''higher-priced covered transaction'' is a transaction that has an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, or by 3.5 or more percentage points for a subordinate-lien covered transaction.

The CFPB final rule also temporarily grants ''qualified mortgage'' status to loans that satisfy certain underwriting standards. *See* 12 CFR 1026.43(e)(4). Loans in this category must satisfy the underwriting requirements of, and are therefore eligible to be purchased, guaranteed or insured by, one of the following: The government-sponsored enterprises (GSEs) (i.e., Fannie Mae and Freddie Mac) while they operate under Federal conservatorship or receivership, HUD (but only loans eligible to be insured under the National Housing Act), VA, USDA, or RHS. The temporary definition requires a qualified mortgage to satisfy only the first 3 requirements of the general definition of a qualified mortgage (i.e., must have regular periodic payments, term must not exceed 30 years, and points and fees must not exceed those specified in 1026.43(e)(3)) and excludes the underwriting, credit and income verification, and 43 percent total monthly debt-to-income ratio requirements for a ''qualified mortgage.'' These applicable provisions of the temporary definition phase out: (1) When each of the four Federal agencies issue their own ''qualified mortgage'' rule; (2) when conservatorship ends for the GSEs; or (3) for all four of the Federal agencies and the GSEs, no later than January 10, 2021, which is 7 years after the effective date of the CFPB final rule. (See 12 CFR 1026.43(e)(4) at 78 FR 6586–6588, specifically 12 CFR 1026.43(e)(4)(iii) at 78 FR 6587–6588.)

## III. This Proposed Rule

As required by section 129C(b)(3)(B)(ii) of TILA, through this rulemaking, HUD proposes to prescribe the regulations for the types of loans that HUD insures, guarantees, or administers, and which HUD has determined are qualified mortgages, under the definition proposed in this rulemaking. Section 129C(b)(3)(B)(ii) makes clear and explicit that the four Federal agencies—HUD, VA, USDA, and RHS—are to define qualified mortgages for their respective programs. As noted earlier, section 129C(b)(3)(B)(ii) authorizes the four Federal agencies, in defining qualified mortgages for their programs, to revise, add to, or subtract from the statutory criteria used to define a qualified mortgage. HUD proposes to provide a definition of qualified mortgage that is aligned, to the extent feasible, with the ability-to-repay criteria set out in TILA, given the statutory mandates and missions of HUD's mortgage insurance and loan guarantee programs.

### *A. Scope of Coverage*

Through FHA, HUD insures single family loans under the National Housing Act (12 U.S.C. 1701 *et seq.*). HUD guarantees section 184 loans for Indian housing under the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) (Section 184 guaranteed loans) and guarantees section 184A loans for Native Hawaiian housing under the Housing and Community Development Act of 1992 (1715z–13b) (Section 184A guaranteed loans). Although section 129C(b)(3)(B)(ii)(I) of TILA specifically references mortgages insured by HUD under the National Housing Act, HUD submits that Section 184 guaranteed loans and Section 184A guaranteed loans were intended to be covered. While Section 184 guaranteed loans and Section 184A guaranteed loans are authorized by the Housing and Community Development Act of 1992, their authorizing sections of the 1992 law are codified in the National Housing Act. They are codified at 12 U.S.C. 1715z–13a and 1715z–13b, respectively. In addition, the direction to all four Federal agencies in section 129C(b)(3)(B)(ii) is to prescribe regulations defining the ''types'' (plural) of loans they insure, guarantee, or administer that are qualified mortgages, and this proposed rule follows that direction. Mortgages insured under the National Housing Act are only one type of mortgage product and, therefore, subclause (I) covers only a portion of the overall scope of section 129C(b)(3)(B)(ii), creating some ambiguity as to its scope. HUD reads the reference to the National Housing Act as being exemplary, and not being an exclusive, limiting provision. The more limiting reading would undercut the intent present in the broader language directing agencies to make qualified mortgage determinations for the types, without qualification, of the loans they insure, guarantee, or administer. HUD,

[9] *See* 78 FR 6506.

[10] The title of section 129C(b) refers to both a ''safe harbor and rebuttable presumption,'' and there are references to both safe harbors and rebuttable presumptions in other provisions of the Act. The authority to revise the definition of ''qualified mortgage'' at 129C(b)(3)(B) is titled ''revision of safe harbor criteria.'' *See also* 76 FR 27390, 27452–55 (May 11, 2011).

[11] *See* 78 FR 6506–6513 for the CFPB's full analysis for adopting a safe harbor and rebuttable presumption standard.

[12] *See* 78 FR 6506.

therefore, interprets the more general language of this provision to permit HUD to define types of mortgages besides those insured under the National Housing Act as qualified mortgages.

Accordingly, this proposed rule would define ''qualified mortgage'' for FHA-insured single family mortgages, section 184 guaranteed loans, and section 184A guaranteed loans.

*B. National Housing Act Single Family Mortgage Programs*

Of the insured/guaranteed loan programs covered by this rule, single family loans insured under the National Housing Act (12 U.S.C. 1701 *et seq.*) present the largest volume of mortgages insured by HUD, through FHA. Under the National Housing Act, FHA is not only required to meet the housing needs of borrowers (12 U.S.C. 1708(a)(7)(B)), including low- and moderate-income borrowers; borrowers from underserved areas, central city areas, and rural areas; and minority borrowers (12 U.S.C. 1709(w)), but to ensure the financial soundness of the Mutual Mortgage Insurance Fund, and make programmatic or premium adjustments as necessary to reduce risk to the fund. *See* 12 U.S.C. 1708(a)(3) and (6). In addition, under the National Housing Act, FHA is charged with prohibiting acts or practices in connection with loans or extensions of credit for the purchase of a manufactured home that are unfair, deceptive, or otherwise not in the interests of the borrower (12 U.S.C. 1706f(d)), and to take administrative action (12 U.S.C. 1708(c)) or impose civil money penalties (12 U.S.C. 1735f–14) against participants who violate the requirements of FHA programs.

Given the broad missions to meet the housing needs of borrowers and to ensure the financial soundness of its programs, HUD is proposing to adopt a definition of qualified mortgage that adheres to the statutory criteria and the CFPB final rule but in a manner that will appropriately fit with the missions of the National Housing Act programs. HUD is proposing to maintain its existing regulatory structure for FHA-insured single family mortgage programs for purposes of defining qualified mortgages, but augment these programs with features of the statutory criteria as revised by the CFPB that are not inconsistent with the statutory parameters of the National Housing Act single family mortgage insurance programs or missions.

In this rulemaking, HUD proposes to define all FHA-insured single family mortgages to be qualified mortgages, except for reverse mortgages insured under HUD's Home Equity Conversion Mortgage (HECM) program (section 255 of the National Housing Act (12 U.S.C. 1715z–20)), which are exempt from the ability-to-repay requirements.[13] Additionally, except for mortgages insured under the Title I Property Improvement Loan Insurance program (Title I), authorized by section 2 of the National Housing Act (12 U.S.C. 1703), HUD proposes to adopt the statutory points and fees structure for all of its FHA-insured single family mortgages, as this feature was implemented by the CFPB final rule. Further, similar to the CFPB final rule structure, this proposed rule would distinguish between two types of qualified mortgages: (1) A safe harbor qualified mortgage and (2) a rebuttable presumption qualified mortgage. For those HUD-insured loans subject to the points and fees structure, HUD would modify the APR limit used in the ''higher-priced covered transaction'' element as defined by the CFPB to distinguish between HUD's safe harbor qualified mortgages and rebuttable presumption qualified mortgages.

*All National Housing Act single family mortgages, except for HECMs, are defined as qualified mortgages by HUD.* HUD is proposing to add a new § 203.19 to its regulations in 24 CFR part 203 [14] that would require, through the proposed definition of ''qualified mortgage,'' for all FHA-insured single family mortgages, except for HECMs, to be ''qualified mortgages.'' HUD's definition would incorporate the safe harbor and rebuttable presumption standards within the definition of a ''qualified mortgage'' rather than create subsets based on whether a mortgage is a higher-priced covered transaction. HUD recognizes, as did the CFPB, that the Dodd-Frank Act language is ambiguous in prescribing the type of presumption provided for a qualified mortgage. The CFPB used its authority under section 129C(b)(3)(B)(i) of TILA to adopt both standards. The CFPB found that adopting both a safe harbor and rebuttable presumption standard, based on a limit of the APR relative to the APOR, provides certainty to encourage creditors to extend credit reasonably and promotes consumers' access to credit.[15] HUD also proposes to adopt both standards using its authority at section 129C(b)(3)(B)(ii) of TILA to revise, add to, or subtract from criteria used to define a qualified mortgage for purposes of section 129C(b)(2)(A).

*FHA streamlined refinancing.* This proposed rule would require FHA streamlined refinances to comply with HUD's qualified mortgage rule. Section 129C(a)(5) of TILA grants HUD the authority to exempt streamlined refinancing from the income verification requirements of section 129C(a)(4) as long as such refinances meet certain requirements, including that the consumer is not 30 days or more past due on the prior existing residential mortgage loan, the loan does not increase the principal balance, the points and fees do not exceed 3 percent, and the new interest rate on the refinanced loan is lower than the current rate. HUD does not consider it necessary to exercise this authority under section 129C(a)(5) because HUD's qualified mortgage definition results in an exemption similar to the one contemplated under section 129C(a)(5) but consistent with HUD's mission to help existing FHA homeowners refinance. Specifically, HUD's qualified mortgage rule would require streamlined refinances to meet the points and fees requirements and HUD requirements for FHA-streamlined refinances. HUD requirements only exempt lenders from verifying income if the loan is originated consistent with the FHA-streamlined refinancing requirements, which means that the mortgage must be current, that the loan is designed to lower the monthly principal and interest payment, and that the loan involves no cash back to the borrower except for minor adjustments.[16]

Requiring streamlined refinances to be ''qualified mortgages'' will also subject them to the APR threshold requirement for being either a rebuttable presumption or safe harbor qualified mortgage. Given the unique nature of streamlined refinances, this proposed rule would modify the CFPB rebuttable presumption standard to clarify that a

[13] Similar to action taken by the CFPB, HUD exempts HECM, HUD's reverse mortgage program, from the ability-to-repay requirements. As CFPB further stated in its preamble to the published January 30, 2013, final rule, making a reverse mortgage a ''qualified mortgage'' would be contrary to the purpose of the statue because it would allow a ''qualified mortgage'' to include otherwise banned prepayment penalties. (*See* 78 FR 6516.)

[14] All single family mortgages insured by FHA under the National Housing Act are governed by regulations in 24 CFR part 203 except for property improvement and manufactured home loans under Title I and the Home Equity Conversion Mortgage (HECM) program.

[15] *See* 78 FR 6506–6513 for the CFPB's full analysis for adopting a safe harbor and rebuttable presumption standard.

[16] Handbook 4155.1, Ch. 6, Sec. C (Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Unit Mortgage Loans—Streamline Refinances) *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4155.1.*

presumption is rebutted if the lender does not meet the underwriting requirements applicable to the transaction. Therefore, if a streamlined refinance was a ''rebuttable presumption qualified mortgage'' the presumption could only be rebutted by showing that the lender did not meet the applicable HUD requirements for originating streamlined refinances, including the points and fees limit.

*Title I program.* Loans insured under the Title I program would be safe harbor qualified mortgages, with no specific points and fees limits and with no APR limits. The Title I program insures loans to finance the light or moderate rehabilitation of properties, as well as the construction of nonresidential buildings on the property. This program may be used to insure such loans for up to 20 years on either single or multifamily properties. The maximum loan amount is $25,000 for improving a single family home. Under section 2(a) of the National Housing Act (12 U.S.C. 1703(a)), the Secretary is vested with the authority to establish the terms and conditions under which FHA will insure financial institutions that extend loan financing for home improvement loans for manufactured homes. Under section 2(h) of the National Housing Act (12 U.S.C. 1703(h)), the Secretary is authorized to issue rules and regulations to carry out the provisions of Title I. HUD has determined that designating Title I loans as safe harbor qualified mortgages, as proposed in this rule, furthers the purposes of Title I. HUD's proposed approach is intended to provide the necessary flexibility to continue to meet the housing needs of underserved borrowers, recognizing the unique nature of the Title I loan program, and to make programmatic and premium changes to maintain financial soundness. Coverage of the Title I program would be addressed by adding a definition of ''qualified mortgage'' to the definitions in 24 CFR 201.7.

*Points and fees limitation.* HUD's proposed ''qualified mortgage'' definition adopts the CFPB's points and fees limitations at 12 CFR 1026.43(e)(3). A mortgage, except a mortgage insured under Title I or HECM, which does not comply with the limit on points and fees would be ineligible for insurance under the National Housing Act.

The three percent points and fees limit is one of the statutory criteria used to define a qualified mortgage, and the CFPB has retained this criterion in its regulatory definition, with adjustments to facilitate compliance for smaller loans. Although it is also within the purview of HUD's ability to ''revise, add to, or subtract from'' the definition of qualified mortgage, under section 129C(b)(3) of TILA, and amend the points and fees, HUD considers the proposed adoption of the points and fees limit as established by statute and adopted by the CFPB in its final rule to be appropriate.[17] By maintaining consistency with the points and fees threshold that applies to conventional qualified mortgages under the CFPB final rule, HUD expects to remove that requirement as a consideration in whether an insured or a conventional qualified mortgage is a more appropriate choice in a particular situation.

This approach also isolates points and fees as an independent factor and would allow HUD to focus on its existing requirements while it considers whether adjustments are necessary as HUD's experience with the effects of qualified mortgages develops.

*Specific solicitation of comment.* HUD is aware of the considerable comment on the issue of the three percent points and fees limitation (which is the limitation in the statute), including specific elements of the points and fees, received in response to the proposed rule that preceded CFPB's final rule on qualified mortgages. With respect to FHA-insured loans, HUD has limited data on points and fees charged on past FHA-insured loans, and therefore relies, to an extent, on the analysis undertaken by the CFPB, much of which was presented in the CFBP final rule in response to public comments. Essentially, the proposal that HUD presents in this rulemaking is that the CFPB's points and fees limitation for the broader mortgage market is also appropriate for FHA's segment of the market. As a result, HUD seeks comment from lenders participating in its programs on any issues specific to HUD's mortgage insurance and loan guarantee programs that HUD should take into consideration in setting its points and fees limits consistent with the CFPB's definition, including relevant differences (if any) with the non-FHA market, and the possibility for potential adverse selection issues if FHA were not to adopt the CFPB's points and fees limitation.

*Two subsets of FHA-insured qualified mortgages.* This rulemaking proposes to establish two subsets of FHA-insured ''qualified mortgages'': a ''rebuttable presumption qualified mortgage'' and a ''safe harbor qualified mortgage.'' As noted earlier in this preamble, with the exception of HECMs, the proposed rule would require all FHA-insured single family mortgages to meet either the ''rebuttable presumption qualified mortgage'' or ''safe harbor qualified mortgage'' definition. HUD reads the ''for purposes of paragraph [129(b)(2)(A) of TILA]'' to include the basic purpose served by a qualified mortgages; namely, to provide mortgagees the presumption that a loan that is a qualified mortgage meets the ability to repay requirements of TILA section 129C(a). The proposed rule also states the degree to which each subset of FHA-insured qualified mortgages addresses its purpose of providing a presumption of compliance with the ability to repay requirements.

*Rebuttable presumption qualified mortgage.* A ''rebuttable presumption qualified mortgage'' would be defined as a single family mortgage that is insured under the National Housing Act, except for loans insured under Title I or HECMs, which would include the requirement that it does not exceed the CFPB's limits on points and fees, codified at 12 CFR 1026.43(e)(3), and has an annual percentage rate that exceeds the average prime offer rate for a comparable mortgage, as of the date the interest rate is set by, more than the combined annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage. The rule provides that a mortgage that meets the requirements for a rebuttable presumption qualified mortgage would be presumed to comply with the ability to repay requirements in 15 U.S.C. 1639c(a). Additionally, any rebuttal of such presumption of compliance must show that despite meeting the ''rebuttable presumption qualified mortgage'' requirements, the mortgagee did not make a reasonable and good-faith determination of the mortgagor's repayment ability at the time of consummation, as applicable to the type of mortgage, when underwriting the mortgage in accordance with HUD requirements, or that the points and fees limit was exceeded.

*Safe harbor qualified mortgage.* A ''safe harbor qualified mortgage'' would be defined as one that is either (1) a mortgage insured under the National Housing Act, except for a mortgage insured under Title I or a HECM, and that meets the requirements of the National Housing Act, including the points and fees limit, and that has an APR for a first-lien mortgage relative to the APOR that is less than the combined annual mortgage insurance premium and 1.15 percentage points; or (2) a mortgage insured under Title I. A mortgagee that meets the requirements for a safe harbor qualified mortgage is deemed to meet the ability-to-repay requirements in 15 U.S.C. 1639c(a).

[17] HUD's upfront mortgage insurance premium (UFMIP) is not included in the points and fees.

HUD's proposed categorizations of safe harbor and rebuttable presumption are similar, but not identical to those of the CFPB. The CFPB final rule does not establish a ''safe harbor qualified mortgage'' or a ''rebuttable presumption qualified mortgage'' *per se.* Rather, the CFPB final rule provides separate definitions of ''higher-priced covered transaction'' and ''qualified mortgage'' and then states that (1) a qualified mortgage that is not a higher-priced transaction complies with the ability-to-repay requirements; and (2) a qualified mortgage that is a higher-priced transaction is presumed to comply with the ability-to-repay requirements. Even though the CFPB final rule is structured in this way to provide only a single definition of ''qualified mortgage,'' the preamble to the CFPB final rule acknowledges that the result is that ''the final rule distinguishes between two types of qualified mortgages based on the mortgage's APR relative to the APOR.'' *See* the CFBP final rule at 78 FR 6505. The CFPB final rule also acknowledges that the definition of ''qualified mortgage'' may be structured in different ways, and the Federal Reserve Board's proposed rule on qualified mortgage (76 FR 27390, May 11, 2011) proposed two alternative definitions of a qualified mortgage, one that would have operated as a legal safe harbor, and one that would have provided a rebuttable presumption of compliance. *See* 78 FR 6417, 6508.

*APR (Annual Percentage Rate) relative to APOR (Average Prime Offer Rate).* Similar to the CFPB final rule, HUD's proposed rule would distinguish between the two types of qualified mortgages based on the mortgage's APR relative to the APOR for the great majority of FHA-insured single family mortgages. Using the APR relative to APOR to distinguish between safe harbor and rebuttable presumption for most loans provides consistency with a significant feature of the CFPB rule.[18] The CFPB final rule, at 12 CFR 1026.35, consistent with section 129C(b)(2)(B) of TILA, provides for CFPB to set the APOR for a comparable transaction and to publish such rate.

Title I single family mortgages are specialized products that require further study to determine additional parameters for distinguishing the rebuttable presumption and safe harbor qualified mortgages. As referenced above, HUD proposes to designate them as safe harbor qualified mortgages so as not to interfere with current lending practices until appropriate parameters to distinguish between safe harbor and rebuttable presumption mortgages under Title I can be determined.

HUD's purpose in establishing two categories of qualified mortgages for the bulk of loans it insures is to maintain consistency with the TILA statutory criteria defining qualified mortgage, as well as the CFPB's definition, to the extent consistent with the National Housing Act. The difference in structure from the CFPB final rule is that HUD proposes to incorporate the APR as an internal element of HUD's definition of qualified mortgages that would distinguish the safe harbor qualified mortgages from the rebuttable presumption qualified mortgages. The CFPB's ''higher-priced covered transaction'' is an external element that is applied to a single definition of ''qualified mortgage.''

HUD's ''safe harbor qualified mortgage'' would provide a different APR relative to APOR threshold than the CFPB's requirement that a first-lien covered transaction have an APR of less than 1.5 percentage points above the APOR. Under this proposed rule, for a non-Title I single family mortgage to meet the ''safe harbor qualified mortgage'' definition, the mortgage would be required to have an APR that does not exceed the APOR for a comparable mortgage by more than the combined annual mortgage insurance premium (MIP) and 1.15 percentage points. Because all FHA-insured mortgages include a MIP that may vary from time to time to address HUD's financial soundness responsibilities, including the MIP as an element of the threshold that distinguishes safe harbor from rebuttable presumption allows the threshold to ''float'' in a manner that allows HUD to fulfill its responsibilities that would not be feasible if HUD adopted a threshold based only on the amount that APR exceeds APOR. If a straight APR over APOR threshold were adopted by HUD, every time HUD would change the MIP, to ensure the financial soundness of its insurance fund and reduce risk to the fund or to reflect a more positive market, HUD would also have to consider changing the threshold APR limit.

*Specific solicitation of comment.* HUD seeks comment on whether lenders participating in its mortgage insurance and loan guarantee programs would lower the APR relative to the APOR such that it is always less than the combined annual mortgage insurance premium and 1.15 percentage points, so that the lender is originating only safe harbor qualified mortgages. Specifically, would lenders always opt for the safe harbor qualified mortgage and never make a rebuttable presumption qualified mortgage? If so, HUD welcomes comments on views on the effect that this incentive may have on lenders, borrowers, and the broader economy.

*Safe harbor versus rebuttable presumption mortgage—differences in liability protection.* FHA-approved lenders that originate a safe harbor mortgage operate with greater legal protections than those that issue rebuttable presumption mortgages, but the latter group is not without legal protections.

For an FHA-approved lender that originates a safe harbor qualified mortgage, the mortgage is conclusively presumed to comply with the ability to repay requirements. Meeting the qualified mortgage criteria and underwriting requirements and pricing of the loan at a prime rate are sufficient to ensure that the lender made a reasonable and good-faith determination that the borrower will be able to repay the loan. If a borrower brings a claim that the FHA-approved lender did not make a reasonable and good-faith determination of the borrower's ability to repay the FHA-insured mortgage, and the court finds that the originated mortgage was a safe harbor qualified mortgage, as defined by HUD, then that finding by the court conclusively establishes that the lender complied with the ability-to-repay requirements and the consumer's claim is denied.

For an FHA-approved lender that originates a rebuttable presumption mortgage, the mortgage is presumed to comply with the ability-to-repay requirements. If a borrower brings a claim that the FHA-approved lender did not make a reasonable and good-faith determination of the borrower's ability to repay the FHA-insured mortgage, and the court finds that the originated mortgage was a rebuttable presumption qualified mortgage, as defined by HUD, then the borrower may rebut the presumption. Therefore, the lender should exert greater care in underwriting the loan than would be true in the absence of any liability for extending a loan which the borrower cannot afford to repay. For the borrower to prevail on its claim against a lender that originates a rebuttable presumption, the borrower must prove that the lender did not make a reasonable and good-faith effort in evaluating the borrower's ability to repay the FHA-insured mortgage in accordance with HUD requirements.

For either type of mortgage, however, documentation of the borrower's ability to repay will be important in demonstrating compliance with the ability-to-repay requirements. As stated

[18] APOR does not include private mortgage insurance (PMI).

in the preamble to the CFPB final rule: ''As enacted by the Dodd-Frank Act, TILA section 129C(a)(1) provides that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good-faith determination, based on verified and documented information, that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan according to its terms and all applicable taxes, insurance, and assessments.'' (See 78 FR 6460.)

*C. Native American and Native Hawaiian Loan Guarantee Programs*

Similar to Title I loans, HUD's Section 184 and Section 184A guaranteed loans create a very unique subset of loans for HUD and require additional study to determine the appropriate parameters for distinguishing rebuttable presumption and safe harbor qualified mortgages. HUD proposes to designate them as safe harbor qualified mortgages, with no APR limit, and with no points and fees limit, so as not to interfere with current lending practices until appropriate parameters to distinguish between safe harbor and rebuttable presumption mortgages can be determined. The pertinent regulatory provisions designating these loans safe harbor qualified mortgages are included in parts 1005 and 1007 of this title.

*D. Existing HUD Requirements*

There are also provisions among HUD's requirements at 24 CFR part 203 that already apply to mortgages insured under the National Housing Act and are consistent with section 129C(b)(2)(B) of TILA and the CFPB's requirements, including that a mortgage have regular periodic payments, that the mortgage does not exceed 30 years, and that lenders apply specific underwriting requirements.[19] HUD is proposing to continue to use its existing underwriting and income verification requirements. HUD is proposing to not adopt the CFPB's 43 percent total monthly debt-to-income ratio requirement, in order to remain consistent with HUD's mission with respect to underserved borrowers. HUD does not expect its loan volume to increase as a result of its decision not to adopt the CFPB's 43 percent total monthly debt-to-income ratio requirement.

*E. Higher-Priced Covered Transactions*

The fact that the CFPB final rule provides a separate definition of ''higher-priced covered transaction'' may potentially create issues in that some HUD safe harbor qualified mortgages would also be higher-priced covered transactions as defined by the CFPB. To the extent that there are requirements not related to qualified mortgages that apply to higher-priced covered transactions, such requirements would apply to mortgages that meet the higher-priced covered transaction definition regardless of whether they are safe harbor or rebuttable presumption. For example, the calculation of certain maximum payments with respect to loans with balloon payments under 12 CFR 1026.43(c)(5)(ii)(A) of the CFPB's regulations is not expected to have any impact on mortgages insured under the National Housing Act. Apart from this requirement, HUD, however, is currently not aware of other possible overlaps of CFPB requirements.

*F. HUD's Proposed Rule Is Consistent With Sections 129B and 129C of TILA*

In prescribing by rule the types of loans HUD insures that are qualified mortgages for purposes of TILA section 129C(b)(2)(A), HUD is required to consult with the CFPB and to make a finding that such rule is consistent with the purposes of sections 129B and 129C of TILA.[20] HUD has consulted with the CFPB in the preparation of this proposed rule. HUD's existing regulations and guidance, promulgated under HUD's mandates to assist underserved borrowers and ensure the financial soundness of its insurance programs, already require FHA lenders to carefully assess a borrower's ability to repay, prohibit the use of products with higher risk, and restrict certain fees charged to the borrower. This rulemaking proposes to incorporate, in HUD's existing regulations, the CFPB's limit on points and fees and an APR relative to APOR calculation comparable to CFPB's calculation, but not identical, to establish safe harbor and rebuttable presumption qualified mortgages for the majority of FHA's portfolio and will provide further safeguards against risky lending and abusive terms. In addition, clarifying the extent of the presumption of ability to repay compliance afforded a single family mortgage insured under the National Housing Act or guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 provides TILA compliance assurance to lenders making loans insured and guaranteed by HUD.

HUD, therefore, finds that defining the loans it insures and guarantees as qualified mortgages in terms of its existing requirements for all lenders participating in its programs, coupled with the requirements adapted here, will provide a wide range of mortgagors access to residential mortgages on loan terms that reasonably reflect their ability to repay while protecting such mortgagors from unfair lending practices, consistent with the purpose of sections 129B and 129C of TILA, as stated in section 129B(a)(2).

In defining ''qualified mortgage'' in this way, HUD is stating that its insured single family mortgages and guaranteed residential loans meet TILA's ability-to-repay requirements. In essence, HUD is proposing not to insure a single family mortgage or guarantee a single family residential loan that is not a qualified mortgage, as defined by HUD. When HUD's definition is issued in final and becomes effective, following review and consideration of public comment, HUD's definition will replace the CFPB's qualified mortgage definition at 12 CFR 1026.43(e), and therefore preclude the applicability of the temporary definition for loans eligible to be insured by HUD under the National Housing Act, as provided in the CFPB final rule at 12 CFR 1026.43(e)(4)(iii).

As addressed in the following section, HUD has determined that it is important for its definition to govern its programs, consistent with statutory intent and the statutory mandate to HUD and the other three Federal agencies to issue their own definitions of qualified mortgage. The CFPB's definition was designed for the general lending market, not specifically for HUD's mortgage insurance and loan guarantee programs. Therefore, wholesale application of ''qualified mortgage,'' as defined by the CFPB, without any modifications made by HUD, does not work as well for HUD's programs as HUD's definition.

## IV. Justification for Shortened Public Comment Period

For HUD rules issued for public comment, it is HUD's policy to afford the public ''not less than 60 days for submission of comments.'' *See* 24 CFR 10.1. In cases in which HUD determines that a shorter public comment period

[19] *See* 24 CFR 203.1, 203.17(c)–(d), 203.33, 203.34; Handbook 4155.1 (Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Unit Mortgage Loans) and Handbook 4155.2 (Lender's Guide to the Single Family Mortgage Insurance Process) *available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh;* Borrowers Section 184 Loan Resources, *available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/homeownership/184/borrowers;* Section 184A Native Hawaiian Housing Loan Guarantee Program, *available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8711.pdf.*

[20] The purpose of 129B and 129C of TILA is to assure that consumers are offered and receive residential mortgages on loan terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive. 15 U.S.C.1639b(a)(2).

may be appropriate, it is also HUD's policy to provide an explanation of why the public comment period has been abbreviated. For the reasons provided in this section of the preamble, HUD believes that this proposed rule merits an abbreviated public comment period.

HUD's rule needs to be issued and effective by January 10, 2014, to decrease the risk of disruption to HUD's mortgage programs and avoid jeopardizing the availability of an important source of affordable home financing for first-time homebuyers and minority homebuyers, including Native Americans and Native Hawaiians. If HUD's rule is not effective by this date, these mortgages will be subject to the CFPB's definition of qualified mortgage, a definition that is not focused on, to the extent that HUD's definition is required to be, the populations that the HUD programs have a mission to serve. Specifically, CFPB's definition would result in a lower share of safe harbor qualified mortgages for FHA and would negatively affect borrowers with greater than 43 percent total monthly debt-to-income ratios. Further, the lack of a HUD rule on qualified mortgages would create uncertainty among FHA lenders. Delay in the implementation of this rule would increase the risk of disruption or delay in the availability of homeownership or home improvement financing for vulnerable groups of consumers, especially those who utilize the Title I, Section 184, and Section 184A programs.

As discussed in the preamble, section 129C(b)(3)(B)(ii) of TILA charges HUD, VA, USDA, and RHS to prescribe their own rules, in consultation with the CFPB, defining the types of loans that these agencies insure, guarantee, or administer, as applicable, that are qualified mortgages. The statutory charge to these four agencies to issue their own definitions of qualified mortgage for their financing programs reflects a statutory view that these agencies are in the best position to define ''qualified mortgage'' for their loan products, consistent with the purposes of sections 129B and 129C of TILA, and within the statutory parameters of the programs and the mission of each agency.

For HUD to responsibly and effectively carry out its rulemaking mandate under the Dodd-Frank Act, HUD did not issue its own qualified mortgage rule in advance of the CFPB final rule (nor did any of the other three Federal agencies). Similar to the statutory authority provided to the four Federal agencies, the CFPB was also authorized, in prescribing its rule defining qualified mortgage, to revise, add to, or subtract from, the statutory criteria defining qualified mortgage, factoring into HUD's decision to be prudent and wait for the CFPB final rule. HUD determined it was important to wait for the CFPB final rule defining qualified mortgage, with HUD's objective to be as consistent as feasible with the CFPB's definition, which closely tracks the statutory definition, while remaining attentive to HUD's mission and the statutorily required features of the various types of insured mortgage products.

Although the CFPB published its final rule in the **Federal Register** on January 30, 2013, at 78 FR 6408 (effective as of January 10, 2014, one year from the date of the CFPB's posting of the rule on its Web site), the CFPB published on that same date, at 78 FR 6622, a proposed rule that submitted for public comment certain amendments to the CFPB final rule. These amendments included additional exemptions from the ability-to-repay requirements, and one such exemption was for the four Federal agencies' refinance programs. *See* 78 FR 6623. By final rule issued on May 29, 2013, and published on June 12, 2013, at 78 FR 35430, the CFPB determined that the Federal agencies' refinance programs would not be exempt from the ability-to-repay requirements.

With CFPB having made its determinations on ability to pay/qualified mortgage requirements, as provided in its January 30 and June 12, 2013, final rules, it is necessary, in order to avoid disruptions in meeting the housing needs of borrowers that HUD is charged to serve, for HUD to issue for effect as quickly as possible its own rule on ''qualified mortgage'' so that HUD's rule is in place on or before January 10, 2014, the date the CFPB final rule becomes effective. It was important for HUD to wait and see the scope of the CFPB's amendments, which were finalized in the June 12, 2013, rule because HUD must not only take into consideration the statutory criteria and purposes for defining a qualified mortgage as set out in the Dodd-Frank Act and the regulatory criteria as promulgated in the CFPB's rules, but must take into consideration the purposes and provisions of the programs HUD administers. Unlike the CFPB, HUD's definition is not designed for the general lending market but for the lenders who participate in HUD's mortgage insurance and guarantee programs and the borrowers who utilize mortgages under HUD's programs, and, as previously noted, the Dodd-Frank Act, is clear that HUD's definition of ''qualified mortgage'' is to govern HUD programs.

As discussed in this preamble, HUD maintains for its mortgage insurance and loan guarantee programs the regulatory framework now in place. HUD's proposed definition of ''qualified mortgage'' presents some additions to the requirements under which these programs are governed, to the extent feasible to better align them with the TILA purposes and the CFPB final rule.

HUD's mortgage insurance and loan guarantee programs play a central role in the housing market and act as a stabilizing force during times of economic distress, facilitating mortgage financing during periods of severe constriction in conventional markets. Having HUD's qualified mortgage rule in place and effective by January 10, 2014, is a step that HUD must take to avoid unnecessarily disrupting the mortgage market, and seriously jeopardizing the security and certainty that HUD's mortgage insurance and loan guarantee programs provide in the housing market.

For these reasons, HUD has determined that an abbreviated comment period is appropriate for this proposed rule. Because the comment period is an abbreviated one, HUD will consider comments that are submitted after the comment period has closed.

## V. Findings and Certifications

### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). This proposed rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

As already discussed in the preamble, this rulemaking would remove the application of the CFPB's qualified mortgage rule to HUD-eligible loans and replace it with a definition of ''rebuttable presumption qualified mortgage'' and ''safe harbor qualified mortgage'' for loans insured or guaranteed by HUD. Neither the economic costs nor the benefits of this proposed rule are greater than the $100 million threshold that determines economic significance under Executive Orders 12866 and 13563. The expected impact of the rulemaking would be no greater than an annual reduction of

lenders' legal costs of $41 million on the high end to $12.3 million on the low end, and may even fall below this range.

Under HUD's qualified mortgage rule, lenders face lower costs of compliance than under the CFPB final rule and therefore receive incentives to continue making these loans without having to pass on their increased compliance costs to borrowers. While borrowers benefit from not having to pay for the higher lender costs, they also face less opportunity to challenge the lender with regard to ability to repay. HUD expects that almost all borrowers would gain from the reduction in litigation and that the reduction of the interest rate will compensate for the loss of the option to more easily challenge a lender. In addition, with reduced interest payments, the likelihood of a challenge is reduced. Very few borrowers would lose from this rulemaking. Generally, the reduction in legal costs represents a societal benefit. However, the rare instance a settlement in the borrower's favor is prevented that represents a transfer from the borrower to lender (to be redistributed to all other borrowers). Relative to the CFPB rule, HUD does not expect its qualified mortgage rule will substantially decrease the potential benefits of ability-to-repay lawsuits.

If HUD had proposed a limit in excess of the CFPB standard on points and fees for receiving qualified mortgage status, there would be fewer borrowers benefiting as lenders would have less incentive to reduce points and fees (in both the FHA market and in the conventional market as conventional lenders who charge points and fees above the CFPB limit but below a higher HUD limit could attain qualified mortgage status by sending some of these loans to HUD). Moreover, HUD through proposing its own rebuttable presumption standard based on the spread between APOR and APR plus MIP keeps pressure on conventional lenders to keep APR within the limit for safe harbor as well, which will help ensure consumers are not merely charged higher interest rates in return for reduced points and fees.

To estimate the size of the reduction in cost to FHA lenders, HUD notes that the CFPB estimated the legal costs to defend potential challenges on a nonqualified mortgage loan would add between 3 and 10 basis points to the interest rate on the loan.[21] HUD views 10 basis points (0.10 percentage points) as an upper bound because qualified mortgage loans with rebuttable presumption are expected to incur much lower legal costs to defend against challenges than non- qualified mortgage loans.

As discussed above, HUD would make all Title I, Section 184, and Section 184A insured mortgages and guaranteed loans safe harbor qualified mortgages. Under the CFPB final rule, many of these loans would have upfront fees and points that exceed the cap listed and would therefore be classified as nonqualified mortgages. Estimating the number of FY 2013 loans for the Title I program at 5,000 with an average balance of $47,900, the aggregate loan amount would be approximately $200 million. Estimating the number of FY 2013 loans for the Section 184 and Section 184A program also at 5,000, with an average balance of $175,000, the aggregate loan amount would be approximately $900 million. Classifying this group of loans as safe harbor qualified mortgages and applying the upper bound of 0.10 percentage points would lower lenders' legal costs to defend the loans by $1.1 million or a lower bound estimate of $400,000. However, because HUD does not track APR or points and fees on Title 1, Section 184, and Section 184A loans, HUD cannot estimate with certainty the percentage of loans that would be non-qualified mortgages. As such, HUD believes a high share of these loans would be non-qualified mortgages, and assumes 100 percent for this analysis, but it is reasonable to state that this percentage may be less than 100 percent, and the resulting benefits to consumers and legal cost reductions for lenders from the proposed rule may be overstated.

Under the CFPB final rule, mortgages insured under Title II of the National Housing Act (with the exception of reverse mortgages insured under section 255 of this act) would be classified as nonqualified mortgages, while others would be qualified mortgages afforded a rebuttable presumption or a safe harbor presumption. A small number (about 7 percent) of Title II loans would not qualify as qualified mortgages based on their exceeding the points and fees limit. All other loans that FHA currently insures under Title II would meet qualified mortgage standards under the CFPB final rule, but about 20 percent only do so with a rebuttable presumption of compliance with ability to repay. The remaining FHA loans under the CFPB final rule (about 74 percent) would qualify for qualified mortgage status with a safe harbor presumption of compliance with the ability to repay requirements.

The Title II loans that would be nonqualified mortgages under the CFPB final rule would remain nonqualified mortgage under the proposed rule. The difference is that HUD, through this rulemaking, would no longer insure loans with points and fees above the CFPB level for qualified mortgage. This policy provides a very strong incentive for HUD mortgagees to comply with the qualified mortgage points and fees requirements. As a result, only a negligible fraction of these affected loans would have to find alternatives to FHA execution, or not be made at all, once the HUD qualified mortgage rule is in place. Most are expected to comply and to continue to be insured by HUD. Therefore, the costs and benefits would be similar to all other Title II loans.

The primary impact on FHA loans (excluding Title I) is the reclassification of 19 percent of FHA's non-Title I loans from rebuttable presumption to safe harbor under the proposed rule. HUD estimates the number of loans insured in FY 2013 under the Title I program to be 1,180,000 with an aggregate loan amount of $210 billion. Only 19 percent of the portfolio would be a rebuttable presumption qualified mortgage making the adjusted aggregate loan amount $39.9 billion. Classifying this group of loans as safe harbor qualified mortgages and applying the upper bound of .10 percentage points would lower lenders' legal costs to defend the loans by $39.9M, and applying the lower bound of .03 would result in a reduced cost of $12 million.

Figure 1 in HUD's accompanying economic analysis illustrates the characteristics of the loan categories for FHA-insured loans under this proposed rule. A full economic analysis of the costs and benefits and possible impacts of this rulemaking is available on *www.regulations.gov*.

Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

[21] Regulatory impact analysis by the CFPB of the ''Ability-to-Repay and Qualified Mortgage Standards under Truth in Lending Act (Regulation Z),'' page 24.

As provided in this rulemaking, HUD proposes no change to the current requirements governing its Title I loans, its Section 184 and 184A guaranteed loans, and HECM loans. Therefore, there is no impact on either lenders or prospective borrowers under these programs.

With respect to FHA-insured single family mortgages (except for Title I and HECMs), FHA proposes to adopt the points and fees limitation, similar to the structure provided in the CFPB final rule. As noted earlier in this preamble, the 3 percent points and fees limit is one of the statutory criteria used to define a qualified mortgage, and the CFPB retained this criterion in its regulatory definition with adjustments to facilitate the presumption of compliance for smaller loans. HUD considers the proposed adoption of the points and fees limit as established by statute and adopted by the CFPB in its rule to be appropriate. In addition to the points and fees limitation, and similar to the CFPB final rule, HUD's rulemaking proposes to distinguish between the two types of qualified mortgages based on the mortgage's APR relative to the APOR, for the great majority of FHA-insured single family mortgages. The difference, however, in structure from the CFPB final rule is that HUD proposes to incorporate the APR as an internal element of HUD's definition of qualified mortgages that would distinguish the safe harbor qualified mortgages from the rebuttable presumption qualified mortgages.

With these few exceptions, HUD retains its existing requirements for the majority of its FHA-insured single family mortgages, thereby creating minimal impact on its programs. As also noted earlier in this preamble, there are provisions among HUD's requirements at 24 CFR part 203 that are consistent with section 129C(b)(2)(B) of TILA and the CFPB's requirements, including that a mortgage have regular periodic payments, that the mortgage does not exceed 30 years, and that lenders apply specific underwriting requirements. *See* 24 CFR 203.1, 203.17(c)–(d). HUD is proposing to continue to use its existing underwriting requirements, in order to remain consistent with HUD's mission with respect to underserved borrowers, and therefore does not propose to adopt the CFPB's 43 percent total monthly debt-to-income ratio requirement. The primary change made to the status quo by the Dodd-Frank Act and the CFPB final rule is, simply put, to extend the requirement that a lender determine that a borrower has the ability to repay most single family loans. (See section 129C of TILA as added by title XIV, subtitle B, section 1411 of the Dodd-Frank Act, codified at 15 U.S.C. 1639c (note).) While this may be a new requirement for private industry, HUD has long required, as a matter of prudent underwriting, that lenders determine that borrowers whose mortgage loans are HUD-insured have the ability to repay. For example, in HUD's single family mortgage insurance regulations at 24 CFR 203.21 (consistent with section 203(b)(4) of the National Housing Act), the monthly payments on a mortgage must not be in excess of the borrower's reasonable ability to pay. When there is a second mortgage, the monthly payments on both mortgages must be within the borrower's reasonable ability to repay. *See* 24 CFR 203.32(c).

Specific underwriting guidance, including factors for consideration, are found in HUD Handbook 4151.1, Mortgage Credit Analysis for Mortgage Insurance (October 18, 2010). Factors examined include factors similar to the factors stated in section 129C(a)(3) of the Dodd-Frank Act, 15 U.S.C. 1639c(a)(3). These include current income and expected income that the consumer is reasonably assured of receiving (Handbook 4155.1, chapter 4, sections D and E); debt obligations (as part of credit review in chapter 4, section C); debt-to-income ratio (chapter 4, section C); and employment (chapter 4, section D). The preamble to the CFPB final rule also includes alimony and child support obligations (78 FR 6408, January 30, 2013; see HUD Handbook 4155.1 at chapter 4, section C, page 18), and monthly payments on the current transaction, any mortgage-related loans, and simultaneous loans (*Id.;* see also chapter 5, section C, page 4 of the Handbook, stating that ''The monthly payments under the insured mortgage and second lien, plus housing expense and other recurring charges, cannot exceed the borrower's ability to repay''). Thus, in large part, the requirements of the Dodd-Frank Act and the CFPB final rule are closely aligned with HUD's existing mortgage insurance and loan guarantee programs. HUD requires verification of income on all loans and full documentation.

The one area where HUD's past practice differs from this rulemaking is in the area of points and fees. HUD has chosen to follow the CFPB's cap of 3-percent on points and fees combined, whereas previously points and fees would be individually negotiated. As to points, generally this refers to points charged against interest, so that a higher up-front payment results in a lower interest rate or vice-versa. Origination points and fees, although there is no firm cap for HUD-insured mortgages, are currently limited to reasonable and customary amounts not to exceed the actual costs of specific items and reasonable and customary charges as may be approved by the Federal Housing Commissioner (24 CFR 203.27(a)).

As the market adopts the CFPB's 3-percent cap on points and fees for qualified mortgages, FHA lenders would be required to cap points and fees at about 3 percent, as a result of HUD's existing reasonable and customary standard. However, if HUD simply maintained its existing reasonable and customary standard for FHA lenders, FHA lenders would be forced to determine if charging an amount a little over 3-percent points and fees would mean the loan is a qualified mortgage, which could result in higher litigation costs. By HUD adopting the cap of 3-percent points and fees, lenders would not be forced to determine what is reasonable and customary, thereby, providing certainty in the market and setting a clear enforcement standard.

As an insurer or guarantor of a loan, it is equally important to note that HUD has long had ability-to-repay requirements. As an insurer or guarantor of a loan, it is important for HUD to have its lenders ensure, to the best of their ability and consistent with HUD requirements, that a borrower is capable of repaying a mortgage or loan insured or guaranteed by HUD. If the borrower defaults and is unable to continue to make payments, HUD must pay the lender's claim. To this point, HUD's insurance and loan guarantee programs are statutorily exempt from the credit risk retention requirements of section 15G of the Securities and Exchange Act of 1934, as added by the Dodd-Frank Act. The statute provides that qualified residential mortgages are exempt from credit risk retention requirements and included HUD as one of the four Federal agencies to define what is meant by a qualified residential mortgage. HUD's handbook 4155.1 (Mortgage Credit Analysis for Mortgage Insurance) was included by the Federal agencies charged with promulgating rules to implement the credit risk retention requirements as an appendix to the agencies' proposed rule published on April 29, 2011 (see 76 FR 24090 at 24173) for the purpose of determining and verifying, among other things, borrower funds to close and borrower's monthly household debt, total monthly debit, and monthly gross income. (See 76 FR 24119.) Given HUD's longstanding ability to repay requirements, the transition to qualified mortgage requirements is not as

significant of a change as it is for conventional mortgages.

However, with the CFPB's final regulations now in place, conventional mortgages will now meet ability-to-repay requirements following similar underwriting guidelines long used by HUD. Since FHA-approved lenders also originate conventional mortgages, the establishment of ability-to-repay requirements for conventional mortgages adds more consistency in the mortgage market overall; that is, conventional mortgages will be originated based on underwriting guidelines similar to those long in use by HUD and other federally insured or guaranteed mortgages. Such consistency will further reduce burden on lenders, large and small.

For the reasons provided above and in this preamble overall, the undersigned certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this proposed rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rulemaking that will meet HUD's objectives as described in the preamble to this proposed rule.

*Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (i) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number for Mortgage Insurance-Homes is 14.117; for the Section 184 Loan Guarantees for Indian Housing is 14.865, and for the Section 184A Loan Guarantees is 14.874.

**List of Subjects**

*24 CFR Part 201*

Claims, Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recording requirements.

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 1005*

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

*24 CFR Part 1007*

Loan programs—Native Hawaiians, Native Hawaiians, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR parts 201, 203, 1005 and 1007 as follows:

## PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

■ 1. The authority citation for part 201 is amended to read as follows:

**Authority:** 12 U.S.C. 1703; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 2. Section 201.7 is added to read as follows:

### § 201.7 Qualified Mortgage.

A mortgage insured under section 2 of title I of the National Housing Act (12 U.S.C. 1703) is a safe harbor qualified mortgage that meets the ability to repay requirements in 15 U.S.C. 1639c(a).

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 3. The authority citation for part 203 is amended to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, 1715z–16, 1715u, and 1717z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 4. Section 203.19 is added to read as follows:

### § 203.19 Qualified Mortgage.

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

(1) *Average prime offer rate* means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to mortgagors by a representative sample of mortgagees for mortgage transactions that have low-risk pricing characteristics as published by the Consumer Financial Protection Bureau (CFPB) from time to time in accordance with the CFPB's regulations at 12 CFR 1026.35, pertaining to prohibited acts or practices in connection with higher-priced mortgage loans.

(2) *Annual percentage rate* is the measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the mortgagor to the amount and timing of payments made and is the rate required to be disclosed by the mortgagee under 12 CFR 1026.18, pertaining to disclosure of finance charges for mortgages.

(b) *Qualified Mortgage*—(1) *Limit.* For a single family mortgage to be insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), except for Home Equity Conversion Mortgages under section 255 of the National Housing Act (12 U.S.C. 1715z–20) and mortgages under section 2 of Title I of the National Housing Act (12 U.S.C. 1703), the total points and fees payable in connection with a loan used to secure a dwelling shall not exceed the CFPB's limit on points and fees for qualified mortgage regulations at 12 CFR 1026.43(e)(3), or successor regulation.

(2) *Rebuttable presumption qualified mortgage.* (i) A single family mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), except for Home Equity Conversion Mortgages

under section 255 of the National Housing Act (12 U.S.C. 1715z–20) and mortgages under section 2 of Title I of the National Housing Act (12 U.S.C. 1703), that has an annual percentage rate that exceeds the average prime offer rate for a comparable mortgage, as of the date the interest rate is set, by more than the combined annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage is a rebuttable presumption qualified mortgage that is presumed to comply with the ability to repay requirements in 15 U.S.C. 1639c(a).

(ii) To rebut the presumption of compliance, it must be proven that the mortgage exceeded the points and fees limit in paragraph (b)(1) of this section or that, despite the mortgage being insured under the National Housing Act, the mortgagee did not make a reasonable and good-faith determination of the mortgagor's repayment ability at the time of consummation, by failing to consider the mortgagor's income, debt obligations, alimony, child support, monthly payment on any simultaneous loans, and monthly payment (including mortgage-related obligations) on the mortgage, as applicable to the type of mortgage, when underwriting the mortgage in accordance with HUD requirements.

(3) *Safe harbor qualified mortgage.* (i) A mortgage that is insured under section 2, Title I of the National Housing Act (12 U.S.C. 1703) is a safe harbor qualified mortgage that meets the ability to repay requirements in 15 U.S.C. 1639c(a); and

(ii) A single family mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*), except for Home Equity Conversion Mortgages under section 255 of the National Housing Act (12 U.S.C. 1715z–20), that has an annual percentage rate that does not exceed the average prime offer rate for a comparable mortgage, as of the date the interest rate is set, by more than the combined annual mortgage insurance premium and 1.15 percentage points for a first-lien mortgage is a safe harbor qualified mortgage that meets the ability to repay requirements in 15 U.S.C. 1639c(a).

## PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

■ 5. The authority citation for part 1005 is amended to read as follows:

**Authority:** 12 U.S.C. 1715z–13a; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 6. Section 1005.120 is added to read as follows:

**§ 1005.120 Qualified Mortgage.**

A mortgage guaranteed under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) is a safe harbor qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. 1639c(a).

## PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

■ 7. The authority citation for part 1007 is amended to read as follows:

**Authority:** 12 U.S.C. 1715z–13b; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 8. Section 1007.80 is added to read as follows:

**§ 1007.80 Qualified Mortgage.**

A mortgage guaranteed under section 184A of the Housing and Community Development Act of 1992 (1715z–13b) is a safe harbor qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. 1639c(a).

Dated: September 20, 2013.

**Shaun Donovan,**

*Secretary.*

[FR Doc. 2013–23472 Filed 9–27–13; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0322]**

**RIN 1625–AA11**

## Regulated Navigation Area; Special Buzzards Bay Vessel Regulation, Buzzards Bay, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** The Coast Guard is extending the comment period on the Advanced Notice of Proposed Rulemaking for the Special Buzzards Bay regulation published in the **Federal Register** on July 8, 2013, for 60 days. This will extend the comment period to December 08, 2013. We are extending the comment period to allow the public more time to comment on this subject.

**DATES:** The comment period for the proposed rule published July 08, 2013 (78 FR 40651) is extended. Comments and related material must be received by the Coast Guard on or before December 8, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of Docket Number USCG–2011–0322. 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.

You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. John J. Mauro, Waterways Management Division, U.S. Coast Guard First District, (617) 223–8355, email *John.J.Mauro@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:**

### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

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

*3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*B. Discussion*

On July 08, 2013, the Coast Guard published an Advanced Notice of Proposed Rulemaking in the **Federal Register** (78 FR 40651) seeking comments related to potential modifications of the current mandatory pilotage, escort tug, and Vessel Movement Reporting System (VMRS) Buzzards Bay requirements. In comments to the docket, the Coast Guard has received a request from the public to extend the comment period by 60 days. We have decided to grant this request for an extension of the comment period from October 7, 2013 to December 8, 2013. This will allow the Coast Guard to collect and review all comments before issuing a Notice of Proposed Rulemaking.

Dated: September 14, 2013.

**D.B. Abel,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 2013–23716 Filed 9–27–13; 8:45 am]

BILLING CODE 9110–04–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 90

**[PS Docket No. 13–209, RM–11663; FCC 13–117]**

## Emission Mask Requirements for Digital Technologies on 800 MHz NPSPAC Channels; Analog FM Capability on Mutual Aid and Interoperability Channels

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document seeks comment on proposals to amend the Commission's rules to promote spectrum efficiency, interoperability, and restrict interference in public safety operations in the (806–809/851–854 MHz, 150–170 MHz and 450–470 MHz bands). By this action, the Commission affords interested parties an opportunity to submit comments on these proposed rule changes.

**DATES:** Comments are due on or before November 14, 2013 and reply comments are due on or before November 29, 2013.

**ADDRESSES:** You may submit comments, identified by PS Docket No. 13–209, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/* (or *http://www.fcc.gov/cgb/ecfs*). Follow the instructions for submitting comments.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** John A. Evanoff, Esq., Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0848.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 13–117, adopted August 23, 2013 and released on August 27, 2013. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

1. In the Notice of Proposed Rulemaking (NPRM) in PS Docket No. 13–209, the Commission initiates a new proceeding in response to a Petition for Rulemaking filed by Harris Corporation (Harris). The NPRM proposes to require digital technologies, including but not limited to Terrestrial Trunked Radio (TETRA) based technologies, to comply with Emission Mask H when operated in the 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) band (806–809/851–854 MHz). The NPRM also proposes to require equipment to have analog FM capability when operating on 800 MHz NPSPAC, VHF (150–170 MHz), and UHF (450–470 MHz) public safety mutual aid and interoperability channels. These proposals could help safeguard public safety licensees in the NPSPAC band from adjacent-channel interference and preserve interoperability in the NPSPAC, VHF and UHF bands.

2. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to the NPRM should refer to PS

Docket No. 13–209. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/ www.fcc.gov/cgb/ecfs*). Filers should follow the instructions provided on the Web site for submitting comments.

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

3. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

4. Interested parties may view documents filed in this proceeding on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at *http://www.fcc.gov/cgb/ecfs.* (2) In the introductory screen, click on ''Search for Filed Comments.'' (3) In the ''Proceeding'' box, enter the numerals in the docket number. (4) Click on the box marked ''Retrieve Document List.'' A link to each document is provided in the document list. The public may inspect and copy filings and comments during regular business hours at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The public may also purchase filings and comments from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via email to *fcc@bcpiweb.com.* The public may also download this NPRM from the Commission's Web site at *http:// www.fcc.gov/.*

5. *People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

6. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to § 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order,* 63 FR 44161, August 18, 1998, *Order on Reconsideration,* 64 FR 55161, October 12, 1999. Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

7. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

**A. Initial Paperwork Reduction Act of 1995 Analysis**

8. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

**B. Initial Regulatory Flexibility Act of 1980 Analysis**

9. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (*NPRM*). Written public comments are requested on this IRFA. Comments must be filed by the same dates as listed on the first page of the *NPRM* and must have a separate and distinct heading designating them as responses to this IRFA. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

**C. Need for, and Objectives of, the Proposed Rules**

10. In the *NPRM,* the Commission seeks comment on proposals to amend the Commission's rules governing public safety spectrum at 806–809/851–854 MHz, VHF and UHF. The *NPRM* is intended to determine whether it is in the public interest, convenience and necessity to amend the Part 90 rules for emission masks and interoperability in order to prevent interference and promote interoperable public safety communications.

**D. Legal Basis**

11. The legal basis for any action that may be taken pursuant to the *NPRM* is contained in sections 1, 2, 4(i), 301, 303, 307, 309, 319, 324, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 303, 307, 309, 319, 324, and 332.

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

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

13. *Private Land Mobile Radio Licensees.* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

14. As of November 1, 2012, there were 1,185 PLMR licensees operating in the PLMR band between 806–809/851–854 MHz (NPSPAC band) and 686 PLMR licensees operating on the VHF and UHF public safety interoperability channels. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

15. *RF Equipment Manufacturers.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for the entire year. Of this total, 912 had employment of under 500, and an additional 10 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

**F. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

16. The *NPRM* proposes two rule changes that will affect reporting, recordkeeping and other compliance requirements. The *NPRM* proposes requiring digital technologies, including, but not limited to TETRA-based technologies, to (a) comply with Emission Mask H when operated on 800 MHz NPSPAC channels and (b) have analog FM capability on public safety mutual aid and interoperability frequencies. These digital technologies are spectrum-efficient, but have characteristics that differ from those in use when the Emission Mask rules were adopted and, hence, have a greater likelihood of causing adjacent-channel interference than the earlier technologies. Industry practice recognizes that (1) digitally-modulated signals must be certified under the H-Mask for use in public safety spectrum and (2) radios intended for use on mutual aid and interoperability channels must be capable of analog FM operation. We expect that large and small manufacturers already comply with these proposed regulations. However, to the extent some manufacturers do not already comply with these proposed regulations and industry standards, we expect that such manufacturers would refrain from marketing their equipment to public safety entities as being in compliance with the Commission's rules and ensure that their equipment performs consistent with these proposed regulations designed to prevent interference and preserve interoperability.

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

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

18. We have evaluated our proposals in this *NPRM* in the context of small business entities and find no alternatives, to the benefit of small entities that would achieve our goals of interference avoidance and interoperability. Additionally, this *NPRM* proposes rules that are consistent with industry practice. Accordingly, we expect most manufacturers already comply with our proposed regulations, therefore minimizing any significant economic impact on small entities.

19. We hereby invite interested parties to address any or all of these regulatory alternatives and to suggest additional alternatives to minimize any significant economic impact on small entities. Any significant alternative presented in the comments will be considered.

**H. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

20. None.

**Ordering Clauses**

21. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 303, 316, 332 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 316, 332 and 337, the NPRM *is hereby adopted.*

22. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the NPRM on or before November 14, 2013, and reply comments on or before November 29, 2013.

**List of Subjects in 47 CFR Part 90**

Communications equipment, Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.203 is amended by revising paragraphs (i) and (j)(1) to read as follows:

**§ 90.203 Certification Required.**

* * * * *

(i) Equipment certificated after DATE and marketed for public safety operation in the 806–809/851–854 MHz bands must have the capability to be programmed for analog FM operation on the mutual aid channels as designated in § 90.617(a)(1) of the rules.

(j) * * *

(1) Applications for certification received on or after DATE, for mobile and portable transmitters designed to transmit voice on public safety frequencies in the 150–174 MHz band will be granted only if the mobile/portable equipment is capable of operating in the analog FM mode on the nationwide public safety interoperability calling channel in the 150–174 MHz band. (See § 90.20(c) and (d) of this part.) Applications for certification received on or after DATE, for mobile and portable transmitters designed to transmit voice on public safety frequencies in the 450–470 MHz band will be granted only if the mobile/portable equipment is capable of operating in the analog FM mode on the nationwide public safety interoperability calling channel in the 450–470 MHz band. (See § 90.20(c) and (d) of this part.)

* * * * *

■ 3. Section 90.210 is amended in the table by adding footnote 6 to the entry for ''806–809/851–854'' to read as follows:

**§ 90.210 Emission Masks.**

APPLICABLE EMISSION MASKS

| Frequency band (MHz) | Mask for equipment with audio low pass filter | Mask for equipment without audio low pass filter |
|---|---|---|
| * | * | * |
| 806–809/851–854 [6] | B | H |
| * | * | * |

* * * * *

[6] Transmitters utilizing analog emissions that are equipped with an audio low-pass filter must meet Emission Mask B. All transmitters utilizing digital emissions and those transmitters using analog emissions without an audio low-pass filter must meet emission mask H.

[FR Doc. 2013–23645 Filed 9–27–13; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Part 192

**[Docket No. PHMSA–2013–0161]**

### Pipeline Safety: Class Location Requirements

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** Notice of inquiry, extension of comment period.

**SUMMARY:** On August 1, 2013, PHMSA published a notice of inquiry in the **Federal Register** on ''Class Location Requirements,'' seeking comments on whether integrity management program (IMP) requirements, or elements of IMP, should be expanded beyond high consequence areas (HCA) and, with respect to gas transmission pipeline facilities, whether applying IMP requirements to additional areas would mitigate the need for class location requirements. PHMSA has received two requests to extend the comment period to allow stakeholders more time to evaluate the notice of inquiry. PHMSA concurs with this request and is extending the comment period from September 30, 2013, to November 1, 2013.

**DATES:** The comment period for the proposed rule published on August 1, 2013 (78 FR 46560), is extended. The closing date for filing comments is extended from September 30, 2013, to November 1, 2013.

**ADDRESSES:** Comments should reference Docket No. PHMSA–2013–0161. Comments may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

*Hand Delivery:* DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* Identify the docket number at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

**Note:** Comments will be posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act Statement heading below for additional information.

*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 in the **Federal Register** published April 11, 2000 (65 FR 19477).

**FOR FURTHER INFORMATION CONTACT:** Mike Israni at 202–366–4571 or by email at *mike.israni@dot.gov.*

**SUPPLEMENTARY INFORMATION:** On August 1, 2013, PHMSA issued a notice of inquiry (78 FR 46560), seeking public comment on whether applying the IMP requirements, or elements of IMP, to areas beyond current HCAs would mitigate the need for class location

requirements for gas transmission pipelines. It should be noted that the notice dated August 1, 2013, was incorrectly identified as a ''Notice of proposed rulemaking'' instead of the correct identifier, ''Notice of inquiry.''

The notice of inquiry was published in response to Section 5 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, which requires the Secretary of Transportation to evaluate and issue a report on whether IMP requirements should be expanded beyond HCAs and whether such expansion would mitigate the need for class location requirements.

The American Petroleum Institute (API) and American Gas Association (AGA), on September 23, 2013, and September 24, 2013, respectively, requested that PHMSA extend the notice comment period deadline from September 30, 2013, to November 1, 2013, to give API and AGA members enough time to share the notice with their membership and to collect their members' responses and comments for docket submission.

PHMSA concurs with API and AGA's request and is extending the comment period from September 30, 2013, to November 1, 2013. This extension will provide sufficient additional time for commenters to submit their comments.

Issued in Washington, DC, on September 25, 2013.

**Alan K. Mayberry,**

*Deputy Associate Administrator for Policy and Programs.*

[FR Doc. 2013–23798 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR 226

**RIN 0648–BD27**

## Endangered and Threatened Species: Proposed Rule To Designate Critical Habitat for the Northwest Atlantic Ocean Loggerhead Sea Turtle Distinct Population Segment (DPS) and Proposed Determination Regarding Critical Habitat for the North Pacific Ocean Loggerhead DPS

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** NMFS is reopening the comment period for its Proposed Rule to Designate Critical Habitat for the Northwest Atlantic Ocean Loggerhead Sea Turtle Distinct Population Segment (DPS) and Proposed Determination Regarding Critical Habitat for the North Pacific Ocean Loggerhead DPS. The comment period is being reopened to provide additional opportunity for public comment.

**DATES:** The comment period for the proposed rule published on July 18, 2013 (78 FR 43005) is reopened. Comments and information on this document, identified by NOAA–NMFS–2013–0079, must be received by November 29, 2013. Requests for public hearings must be made in writing (see **ADDRESSES**) by November 14, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2013–0079, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0079,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach our comments.
- *Mail:* Submit written comments to Susan Pultz, NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD 20910.
- *Fax:* 301–713–0376; Attn: Susan Pultz.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received will be part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

The proposed rule, list of references and supporting documents, including the biological report, the draft Economic Analysis and the Initial Regulatory Flexibility Act (IRFA) analysis which is appended to the draft Economic Analysis, are also available electronically at *http://www.nmfs.noaa.gov/pr/species/turtles/loggerhead.htm.*

**FOR FURTHER INFORMATION CONTACT:** Susan Pultz, NMFS, Office of Protected Resources 301–427–8472 or *susan.pultz@noaa.gov;* or Angela Somma, NMFS, Office of Protected Resources 301–427–8474 or *angela.somma@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Reopening of Comment Period

The comment period will be reopened through November 29, 2013.

### Background

On July 18, 2013, we (NMFS) published in the **Federal Register** a proposed rule to designate critical habitat for the Northwest Atlantic Ocean loggerhead sea turtle Distinct Population Segment (DPS) (*Caretta caretta*) within the Atlantic Ocean and the Gulf of Mexico and a proposed determination that no marine areas meet the definition of critical habitat within the jurisdiction of the United States for the North Pacific Ocean DPS. The comment period for this action ended Monday, September 16, 2013. The comment period is being reopened to provide additional opportunity for public comment.

Specific areas proposed for designation include 36 occupied marine areas within the range of the Northwest Atlantic Ocean DPS. These areas contain one or a combination of nearshore reproductive habitat, winter area, breeding areas, and migratory corridors. We are also asking for comment on whether to include as critical habitat in the final rule some areas that contain foraging habitat and two large areas that contain *Sargassum* habitat. The U.S. Fish and Wildlife Service addressed terrestrial areas (nesting beaches) in a separate document (78 FR 18000; March 25, 2013).

We are soliciting comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts. We will consider additional information received prior to making a final designation.

### Public Hearings

We held hearings regarding this proposed rule in Wilmington, NC on September 9, 2013, and in Morehead City, NC on September 10, 2013. Due to budget constraints, we are unsure whether we can hold additional public hearings. However, we are considering requests for additional hearings. Requests for public hearings must be made in writing (see **ADDRESSES**) by November 14, 2013. If we are able to hold an additional public hearing, a notice detailing the specific hearing location and time will be published in

the **Federal Register** at least 15 days before the hearing is to be held. Information on the specific hearing locations and times will also be posted on our Web site at: *http://www.nmfs.noaa.gov/pr/species/turtles/loggerhead.htm.*

Dated: September 25, 2013.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–23715 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**RIN 0648–BC73**

## Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 99

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council submitted Amendment 99 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) to NMFS for review. If approved, Amendment 99 would enable the holders of license limitation program (LLP) licenses authorizing a designated vessel to catch and process Pacific cod in the BSAI hook-and-line fisheries to use newly built or existing vessels that are not eligible under current vessel length and capacity restrictions. This action is necessary to promote safety-at-sea by encouraging the replacement of older vessels with newer and more efficient vessels that are able to meet modern vessel safety standards. This action is intended to facilitate the increased retention and utilization of groundfish by allowing sector participants to use larger vessels with increased processing and hold capabilities. This action is intended to promote the goals and objectives of the FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable laws.

**DATES:** Comments on the amendment must be received on or before November 29, 2013.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2012–0220, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0220,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for this proposed action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS Alaska Region and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Seanbob Kelly, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 99 to the FMP is available for public review and comment.

NMFS manages the U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the GOA FMP and BSAI FMP pursuant to the Magnuson-Stevens Act and other applicable laws.

Amendment 99 would make three substantive changes to the FMP to: (1) Increase the maximum length overall (MLOA) to 220 feet (67 m) on LLP licenses authorizing vessels to catch and process Pacific cod with hook-and-line gear in the BSAI; (2) allow holders of LLP licenses authorized to catch and process Pacific cod with hook-and-line and pot gear in the BSAI to increase the MLOA on the LLP license to 220 feet (67 m) only if the pot gear endorsement is surrendered within a specific time frame; and (3) allow vessels that catch and process Pacific cod with hook-and-line in the BSAI to exceed length, tonnage, and power limits established under the American Fisheries Act (AFA).

### The LLP and BSAI Longline Catcher Processor Subsector

Under the LLP, which was implemented by NMFS on January 1, 2000 (63 FR 52642, October 1, 1998), an LLP license is required for all vessels directed fishing for groundfish in the BSAI and GOA, with limited exemptions for smaller vessels and vessels using a limited amount of jig gear. Directed fishing is defined in regulations at § 679.2. For a vessel designated on an LLP license, the LLP license authorizes the type of fishing gear that may be used by the vessel, the maximum size of the vessel, and whether the vessel may catch and process fish at sea or if it is limited to delivering catch without at-sea processing. LLP licenses specify the MLOA of the vessel to which that LLP license may be assigned. Participants in LLP groundfish fisheries are prohibited from using a vessel to fish for LLP

groundfish that has a length overall (LOA) that is greater than the MLOA specified on the LLP license.

The LLP also includes a species endorsement for Pacific cod in the BSAI (67 FR 18129, April 15, 2002) and GOA (76 FR 15826, March 22, 2011). A vessel subject to the LLP requirements can directed fish for Pacific cod in the BSAI or GOA only if the vessel is designated on an LLP license that has this specific endorsement. The LLP Pacific cod endorsement requirement has, in effect, limited the number of vessels that are eligible to fish for Pacific cod in the BSAI and GOA. For example, under existing LLP regulations, the vessels currently used to directed fish for Pacific cod in the BSAI using hook-and-line gear and process that catch at sea must be assigned an LLP license with a BSAI Pacific cod hook-and-line C/P endorsement. Public Law 108–447, 118 Stat. 2887, Dec. 8, 2004, at section 219(a)(6), defines the term ''longline catcher processor subsector'' as ''the holders of an LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pcod [Pacific cod], hook and line gear.'' There are 36 LLP licenses that meet the eligibility criteria for the BSAI longline C/P subsector as defined in section 219(a)(6).

The vessels used in the BSAI longline C/P subsector fisheries range in length from 107 feet (32.6 m) to 180 feet (54.8 m) length overall (LOA). The average age of the vessels in this fleet is approximately 40 years, and 30 percent were built before 1946. Production capacity and efficiency for BSAI longline C/P subsector vessels are directly related to vessel length and overall vessel design. For example, larger vessels in the fleet can accommodate larger freezer holds that allow vessels to stay at sea for longer periods. Larger C/Ps also can facilitate increased retention and utilization of target species by enabling vessel owners to use additional processing lines for ancillary products.

Vessels eligible to participate in the BSAI longline C/P subsector primarily target Pacific cod in the BSAI, but many also participate in Greenland turbot and sablefish fisheries in the BSAI, as well as Pacific cod fisheries in the GOA. In addition, vessels using longline gear retain incidentally caught species such as skates, rockfish, arrowtooth flounder, and pollock.

Three of the 36 LLP licenses that authorize participation in the BSAI longline C/P subsector also authorize participation in the BSAI Pacific cod fisheries with a C/P using pot gear; of these three licenses, only one is also endorsed to authorize participation in the Western GOA Pacific cod fishery with a C/P using pot gear. Vessels named on these three LLP licenses may elect to participate in either the longline or pot C/P sector in the BSAI Pacific cod fishery, or the vessel may participate in both sectors.

The Council and NMFS annually establish total allowable catch (TAC) limits for Pacific cod and other groundfish targeted by C/Ps using hook-and-line gear in the BSAI and the GOA. In 2007, Amendment 85 to the BSAI FMP modified the allocations of the annual BSAI Pacific cod TAC among various harvest sectors as seasonal apportionments (72 FR 50788, September 4, 2007). The BSAI longline C/P subsector receives an allocation of the annual Pacific cod TAC. Amendment 85 also limited the amount of halibut to be used as prohibited species catch (PSC) in the Pacific cod fishery. Halibut is incidentally caught by vessels using hook-and-line gear. The halibut PSC limit ensures that total incidental mortality of halibut does not exceed a specified limit while at the same time allowing participants to conduct their target fisheries. Once this halibut PSC limit is reached, NMFS closes directed fishing for groundfish that take halibut. This halibut PSC limit constrains the BSAI longline C/P subsector in the Pacific cod and other groundfish fisheries.

Amendment 83 to the GOA FMP established specific allocations of Pacific cod in the GOA similar to those in the BSAI (76 FR 74670, December 1, 2011). Under Amendment 83, the hook-and-line C/P sector receives an allocation of the annual Pacific cod TAC in the Western and Central GOA. The hook-and-line C/P sector is also allocated a limited amount of halibut for use as PSC in the Western and Central GOA Pacific cod fisheries.

In addition to the constraints on Pacific cod allocations and halibut PSC limits implemented under regulations for Amendment 85 to the BSAI FMP and Amendment 83 to the GOA FMP, the BSAI longline C/P subsector has developed private contractual arrangements to limit Pacific cod and halibut PSC use in the BSAI, effectively establishing a *de facto* limited access program. Congress' definition of the BSAI longline C/P subsector and the allocation of BSAI Pacific cod and halibut PSC specifically to the BSAI longline C/P subsector encouraged holders of eligible LLP licenses to form a voluntary cooperative and divide the Pacific cod and halibut PSC allocations among its members. Cooperatives allow multiple quota recipients to aggregate their annual quota amounts, coordinate their collective fishing operations, and benefit from the resulting efficiencies.

**Amendment 99 to the FMP**

The Council and NMFS recognize that the existing regulatory and statutory vessel capacity restrictions provide a disincentive for owners to rebuild or replace their vessels with larger, more efficient and safer vessels. The Council recommended Amendment 99 in October 2012. Amendment 99 is intended to promote the sustainable harvest of groundfish, especially Pacific cod in the BSAI and GOA, by removing disincentives for owners of vessels to rebuild or replace their vessels with larger vessels. To the extent that the vessel owners exercise the vessel replacement opportunity provided in this proposed action, it would promote efficient utilization of the Pacific cod resource in the BSAI and GOA. The proposed action would also promote safety-at-sea by allowing vessel owners to replace existing vessels with newer vessels that can accommodate improved safety features and minimize the risks faced by crew members.

Amendment 99 would increase the MLOA to 220 feet (67 m) on LLP licenses authorizing vessels to catch and process Pacific cod with hook-and-line gear in the BSAI for all LLP licenses not also endorsed for pot gear. The Council determined that establishing a uniform 220-foot (67 m) MLOA for all eligible LLP licenses would encourage LLP license holders in the BSAI longline C/P subsector to replace aging vessels with newer, safer, and more efficient vessels. The Council considered several size limits, including no size limit, and other variable rate and fixed-length increases to vessel size prior to recommending Amendment 99. The Council received public testimony that a 220-foot (67 m) MLOA would provide adequate incentives to meet the Council's objectives for this action and would likely allow vessel owners to replace vessels with new vessels that could accommodate improved efficiency and safety design. This testimony is supported by the RIR prepared for this action, which describes that processing capacity constraints likely limit the size of vessels used in the BSAI longline C/P subsector to 220 feet (67 m) or less.

Amendment 99 would allow LLP license holders holding a license authorized to catch and process Pacific cod with hook-and-line and pot gear in the BSAI to increase the MLOA on the

LLP license to 220 feet (67 m) only if any Pacific cod pot gear endorsements are surrendered within a specific time frame. In recommending Amendment 99, the Council recognized that allowing holders of LLP licenses with Pacific cod pot gear C/P endorsements to designate larger vessels on those LLP licenses could increase vessel capacity in the pot gear C/P fisheries and allow these participants to harvest a greater proportion of the GOA Pacific cod sector allocation relative to their historical catch. This increased capacity could negatively impact historical participants in the Pacific cod pot fisheries. Under proposed Amendment 99, holders of the BSAI longline C/P subsector LLP licenses with Pacific cod pot gear C/P endorsements for the BSAI, GOA, or both could either surrender the Pacific cod pot gear C/P endorsements and a be assigned a 220-foot (67 m) MLOA on the LLP license or retain the Pacific cod pot gear C/P endorsements and the current MLOA on the LLP license would continue to apply. LLP license holders would have 36 months after the effective date of a final rule to implement Amendment 99, if approved, to surrender all Pacific cod pot gear endorsements by requesting that NMFS permanently remove and extinguish all Pacific cod pot gear C/P endorsements specified on the LLP license. If the LLP holder submits a timely written request to remove and extinguish all Pacific cod pot gear C/P endorsements specified on the LLP license, NMFS will assign a 220-foot (67 m) MLOA on that license. If an LLP holder does not notify NMFS of their election to surrender the Pacific cod pot gear C/P endorsement within the 36-month time frame, the current MLOA and Pacific cod hook-and-line and pot gear C/P endorsements would be retained on the LLP license.

Amendment 99, if approved, is also intended to demonstrate to the United States Maritime Administration (MARAD) that the Council recommended and NMFS approved conservation and management measures allowing vessels that exceed the limits set forth in 46 U.S.C. 12113 to participate in certain North Pacific fisheries under the Council's jurisdiction and therefore are eligible to receive a certificate of documentation. If the Secretary approves Amendment 99 and issues a final rule to implement Amendment 99, NMFS will notify MARAD that any vessel named on an LLP license endorsed for participation in the BSAI longline C/P subsector, which is greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower, is authorized for use in the EEZ under the jurisdiction of the Council, and is eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113(d) and MARAD regulations at 46 CFR 356.47.

NMFS does not expect Amendment 99 to increase the fishing operations of C/Ps using hook-and-line gear in the BSAI or GOA. Management constraints such as Pacific cod species endorsements on LLP licenses, sector allocations for Pacific cod in the BSAI and GOA, and halibut PSC limits in the BSAI and GOA limit the ability of vessels on which these LLP licenses are used to expand their overall fishing operations in groundfish fisheries. These management measures in the BSAI and GOA provide an overall limit to the Pacific cod catch by vessels in this subsector, thereby limiting the potential for the BSAI longline C/P subsector to compete with other fishery participants.

This action would not change how groundfish stocks are assessed or modify the harvest specifications process currently used to establish harvest limits and PSC limits. Instead, Amendment 99 would promote the achievement of optimum yield by providing the BSAI longline C/P subsector with the ability to increase retention and utilization of harvested fish by replacing their aging vessels with newer vessels that are capable of incorporating additional processing lines and processing equipment, which are designed to increase overall daily throughput and retention rates.

Public comments are solicited on proposed Amendment 99 to the FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 99, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 99 to be considered in the approval/disapproval decision on Amendment 99. All comments received by the end of the comment period on Amendment 99, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the FMP amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 25, 2013.

**Kelly Denit,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–23770 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 78, No. 189

Monday, September 30, 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 24, 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.

Comments regarding this information collection received by October 30, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. 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.

### Animal and Plant Health Inspection Service

*Title:* Importation of Table Eggs from Regions Where Newcastle Disease Exists.

*OMB Control Number:* 0579–0328.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. Veterinary Services, a program with the Animal and Plant Health Inspection Service (APHIS) is responsible for administering regulations intended to prevent the introduction of animal disease in the United States. Regulations in title 9, Code of Federal Regulations, section 94.6 deal specifically with the importation of table eggs from certain regions that may pose a risk of introducing Exotic Newcastle Disease (END) into the United States.

*Need and Use of the Information:* Although this collection applies to any region where END is considered to exist, the United States is not currently importing table eggs from any END-affected region. APHIS requires the following with regard to imported table eggs: (1) A certificate for table eggs from END-affected regions; and (2) a government seal issued by the veterinarian accredited by the national government who signed the certificate. If the information were collected less frequently or not collected at all, APHIS would be unable to establish an effective defense against the incursion of END from table eggs imported from END-affected regions. This could have serious health consequences for U.S. poultry and economic consequences for the U.S. poultry industry.

*Description of Respondents:* Federal Government.

*Number of Respondents:* 1.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 3.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–23752 Filed 9–27–13; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Generic Information Collection for Land Management Planning

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the proposed information collection, Generic Information Collection for Land Management Planning.

**DATES:** Comments must be received in writing on or before November 29, 2013 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to the U.S. Forest Service, Annie Eberhart Goode, Planning Specialist, Ecosystem Management Services, 6th Floor, 1601 N. Kent Street, Rosslyn, VA 22209. Comments also may be submitted via facsimile to 703–235–0138 or by email to: *aegoode@fs.fed.us.*

The public may inspect comments received at 1621 N. Kent Street, Rosslyn, VA during normal business hours. Visitors are encouraged to call ahead to 202–205–1056 to facilitate entry to the building. Additionally, comments may be viewed at *www.fs.usda.gov/goto/planningrule/directives.*

**FOR FURTHER INFORMATION CONTACT:** Annie Eberhart Goode; 202–205–1056. 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:**

*Title:* Generic Information Collection for Land Management Planning.

*OMB Number:* 0596–NEW.

*Expiration Date of Approval:* N/A.

*Type of Request:* New.

Abstract:

Section 6 of the National Forest Management Act of 1976 (16 U.S.C.1600 *et seq.*) (NFMA) and implementing regulations 36 CFR 219 (2012 Planning Rule) direct the U. S. Forest Service (the Agency) to revise land management plans for each National Forest System (NFS) unit every 15 years, and to continuously monitor conditions to inform interim or subsequent planning actions. Development of Land Management Plans (LMP) pursuant to the NFMA and the 2012 Planning Rule requires an assessment phase, planning phase, and monitoring phase, all of which are designed to foster a transparent, collaborative, and informed planning process.

The planning process defined by the NFMA and the 2012 Planning Rule requires public participation and involvement. As such, the Agency will invite public participation broadly to facilitate public comment and the submission of information that members of the public find to be relevant.

To ensure that the Agency can be inclusive of, and responsive to, stakeholder concerns in the development of land management plans, the Forest Service seeks to obtain OMB approval of a generic clearance to collect both quantitative and qualitative feedback and information for consideration and use in land management planning.

The NFMA and 2012 Planning Rule require the Agency to provide opportunities to the public to participate in the planning process. Information provided by the public assists the Agency in ensuring that LMPs guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability. In particular, the Rule requires the Agency to identify and consider ''relevant, existing'' information. Public participation is required at each stage of the planning process—assessment, planning, and monitoring.

During the assessment phase, pursuant to the 2012 Planning Rule provision on assessments (36 CFR 219.6), the Agency is required to ''identify and evaluate existing information'' relevant to the plan area for the following:

(1) Terrestrial ecosystems, aquatic ecosystems, and watersheds;

(2) Air, soils, and water resources and quality;

(3) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change;

(4) Baseline assessment of carbon stocks;

(5) Threatened, endangered, proposed, and candidate species and potential species of conservation concern present in the plan area;

(6) Social, cultural, and economic conditions;

(7) Benefits people obtain from the NFS planning area (ecosystem services);

(8) Multiple uses and their contributions to local, regional, and national economies;

(9) Recreation settings, opportunities and access, and scenic character;

(10) Renewable and nonrenewable energy and mineral resources;

(11) Infrastructure, such as recreational facilities and transportation and utility corridors;

(12) Areas of tribal importance;

(13) Cultural and historic resources and uses;

(14) Land status and ownership, use, and access patterns; and

(15) Existing designated areas located in the plan area including wilderness and wild and scenic rivers and potential need and opportunity to additional designated areas.

Further, the Agency is required to accept additional comment and feedback throughout the planning process and then monitor conditions, including accepting public input in the plan area, and reporting to the public biennially.

Although the following are not considered ''information'' as defined by the Paperwork Reduction Act (PRA) (5 CFR 1320.3(h)), they do represent the vast majority of the ways and methods that will be used by the Agency to obtain information from stakeholders:

- Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through non-standardized oral communication in connection with such direct observations;
- Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment;
- A request for facts or opinions addressed to a single person;
- Facts or opinions obtained or solicited at or in connection with public hearings or meetings;
- Like items so designated by OMB.

Public participation will be sought during all three phases of a plan revision: assessment, planning, and monitoring. Typically, NFS units publish general solicitations for comments from the public and hold public meetings. Private information will be considered and will become part of the public record if voluntarily provided.

Because the 2012 Planning Rule places strong emphasis on transparency of communication, inclusiveness, and active public involvement, the Agency anticipates that NFS units will innovate and develop new techniques that facilitate focused communication, which produces more granular detail on stakeholder goals and concerns related to forest management. The intent of this generic information collection request (ICR) is to provide an efficient avenue for ensuring that innovative communications strategies have an efficient means of obtaining OMB approval in accordance with the Paperwork Reduction Act.

For example, if a forest planning team recognizes that a complex issue is not well understood, focus groups of knowledgeable stakeholders could be designed and convened to ensure that the issue is well understood by the Agency.

Another example of a communication strategy that could be supported by this generic ICR would be the solicitation of comments on specific issues. Although the PRA does not consider facts and opinions submitted ''in response to general solicitation of comments'' ((5 CFR 1320.3(h)(4)) to be ''information,'' planning for NFS units is complex, and it may be appropriate for public meetings regarding unique resource issues, such as water use, protection of a sensitive area, energy resources or similar issues, as opposed to a general solicitation of comments to be held. Such outreach could support an ''iterative'' approach to land management planning and facilitate productive public input on complex matters.

Additionally, the 2012 Planning Rule and Executive Order 12372 require intergovernmental communication both broadly and specifically. Regular and consistent engagement of State, local, and tribal governments is an important element of land management planning for NFS units. In addition to public meetings, to which all such public entities are invited, planning teams may contact jurisdictions adjacent or proximate to NFS units with similar and/or targeted notices, including a notice that planning for a forest unit has

begun and that the planning team will be assessing information about 15 resource categories.

This generic information collection is intended to facilitate customer and stakeholder feedback and input in an efficient, timely manner while at the same time staying in compliance with the PRA. The information collected from our customers and stakeholders will help ensure that the development of land management plans is both transparent and well-informed. This feedback and input will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services such as improved LMPs or the implementation thereof. These collections will allow for ongoing, collaborative, and actionable communications, and the sharing of applicable information between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

*How will information be collected?* The 2012 Planning Rule specifically states that, outside of basic notification requirements, the Responsible Official has the discretion to determine the ''scope, methods, forum, and timing'' of public input. Additionally, the Responsible Official ''…shall encourage participation'' of youth, low-income populations, and minority populations as well as private landowners whose property may be affected by the land management plan. To meet the letter and spirit of the 2012 Planning Rule, Line Officers need to enhance and support public participation. Although every instance and approach to public participation cannot be identified, the types of collections that this generic clearance is intended to cover include, but are not limited to:

- Customer/stakeholder comment cards/complaint forms;
- Small discussion groups;
- Focus Groups of customers, potential customers, delivery partners, or other stakeholders;
- Cognitive laboratory studies, such as those used to refine questions or assess usability of a Web site;
- Qualitative stakeholder surveys;
- In-person observation testing (for example, Web site or software usability tests);
- Targeted requests for information from State, local, and tribal governments, non-profit groups, and other stakeholders;
- Quantitative surveys designed to inform development of land management plans;
- Other innovative communication strategies designed to facilitate voluntary provision of information by the public to NFS units with minimal burden that may be approved by OMB.

*Who will collect the information?* Public outreach is conducted by the Responsible Official for land management planning, with assistance from the Interdisciplinary Team assembled, as required by the NFMA, to develop a land management plan, well informed by the public.

*What information will be collected?* Any information that members of the public seek to provide to the Agency will be collected. The 2012 Planning Rule identifies broad 15 categories that must be evaluated when assessing a plan area (36 CFR 219.6). In addition, biennial monitoring of the condition of the plan area is required, and 8 broad categories are identified for inclusion in monitoring plans.

*From whom will the information be collected?* All members of the public, stakeholder groups, and State, tribal, and local governments who would like to provide information to the Agency regarding land management planning.

*How will the information be used?* To inform development of land management plans.

*Who will evaluate or analyze the information?* Agency personnel, assigned to a planning task, are responsible for evaluation of any information provided.

Estimate of Annual Burden:

*Type of Respondents:* Members of the public, including State, local and tribal government representatives.

*Estimated Annual Number of Respondents:* 34,000.

*Estimated Annual Number of Responses per Respondent:* 1–2.

*Estimated Burden per Response:* .6 hours.

*Estimated Total Annual Burden on Respondents:* 21,000 hours.

Comment is Invited:

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: September 24, 2013.

**Tony Tooke,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2013–23767 Filed 9–27–13; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Revision of the Land Management Plan for the Francis Marion National Forest

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of initiating the development of a land management plan revision for the Francis Marion National Forest.

**SUMMARY:** The Francis Marion National Forest, located in South Carolina, is initiating the development of a land management plan revision (forest plan) for the Francis Marion National Forest (NF). A Draft Assessment is being posted to our Web site. We are inviting the public to help us develop a preliminary ''need for change'' and a proposed action for the land management plan revision.

**DATES:** A draft of the Assessment report for the revision of the Francis Marion NF land management plan will be posted on the following Web site at *www.fs.usda.gov/goto/scnfs/fmplan* by October 11, 2013.

Public meetings associated with the development of the preliminary ''need for change'' and a proposed action will be announced on the Web site cited above.

It is anticipated that the Notice of Intent to prepare an environmental impact statement (which will accompany the land management plan revision for the Francis Marion NF), will be published in the **Federal Register** around January to February 2014.

**ADDRESSES:** Written comments or questions concerning this notice should be addressed to U.S. Forest Service, Francis Marion and Sumter National Forests, 4931 Broad River Road, Columbia, South Carolina, 29212. Comments or questions may also be sent

via email to *comments-southern-francismarion-sumter@fs.fed.us.* All correspondence, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Mary W. Morrison, Forest Planner, 803–561–4000. 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 time), Monday through Friday.

More information on the planning process can also be found on the Francis Marion National Forest Web site at *www.fs.usda.gov/goto/scnfs/fmplan.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the 2012 Forest Planning Rule (36 CFR Part 219), the planning process encompases three-stages: assessment, plan revision, and monitoring. The first stage of the planning process involves assessing social, economic, and ecological conditions of the planning area, which is documented in an assessment report. A draft of the assessment report for the Francis Marion NF is being completed and will be available by October 11, 2013 on the Forest Web site at *www.fs.usda.gov/goto/scnfs/fmplan.*

This notice announces the start of the second stage of the planning process, which is the development of the land management plan revision. The first task of plan revision is to develop a preliminary ''need for change'', which identifies the need to change management direction in current plans due to changing conditions or other monitoring information. The next task is to develop a proposed action, which is a proposal on how to respond to needs for changes. We are inviting the public to help us develop our preliminary ''need for change'' and a proposed action.

A proposed action will initiate our compliance with the National Environmental Policy Act. A Notice of Intent to prepare an environmental impact statement for the land mangement plan revision, which will include a description of the preliminary need for change and a description of the proposed action, will be published around January to February 2014 in the **Federal Register**.

Forest plans developed under the National Forest Management Act (NFMA) of 1976 describe the strategic direction for management of forest resources for ten to fifteen years, and are adaptive and amendable as conditions changes over time. The Forest Plan for the Francis Marion NF was approved in 1995. On October 17, 2012, a public announcement was made that the Francis Marion NF was beginning to work on the Assessment for revising their Forest Plan. This notice announces the start of the second stage of the planning process, the development of the land management plan revision. Once the plan revision is completed, it will be subject to the objection procedures of 36 CFR Part 219, Subpart B, before it can be approved. The third stage of the planning process is the monitoring and evaluation of the revised plan, which is ongoing over the life of the revised plan.

As public meetings, other opportunities for public engagement, and public review and comment opportunties are identified to assist with the development of the forest plan revision, public announcements will be made, notifications will be posted on the Forest's Web site at *www.fs.usda.gov/goto/scnfs/fmplan* and information will be sent out to the Forest's mailing list. If anyone is interested in being on the Forest's mailing list to receive these notifications, please contact Mary Morrison, the Forest Planner, at the address identified above, or by sending an email to *comments-southern-francismarion-sumter@fs.fed.us.*

**Responsible Official**

The responsible official for the revision of the land management plan for the Francis Marion National Forest is Rick Lint, Forest Supervisor, Francis Marion and Sumter National Forests, 4931 Broad River Road, Columbia, South Carolina 29212.

Dated: September 20, 2013.

**John Richard Lint,**

*Forest Supervisor.*

[FR Doc. 2013–23761 Filed 9–27–13; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–87–2013]**

### Foreign-Trade Zone 160—Anchorage, Alaska; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Municipality of Anchorage, grantee of FTZ 160, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on September 19, 2013.

FTZ 160 was approved by the FTZ Board on July 18, 1989 (Board Order 437, 54 FR 31355, 07/28/1989). The current zone includes the following sites: *Site 1* (56.89 acres)—the Port of Anchorage and Port of Anchorage Industrial Park, 1075 Dock Rd., 1076 Ocean Dock Rd. and 1601 Tidewater Rd, Anchorage; *Site 2* (920 acres)—Anchorage International Airport, Postmark Drive and International Airport Rd, Anchorage; *Site 3* (2.7 acres)—315 East 2nd Ave., Anchorage; *Site 4* (25 acres)—Altman/Greenbrier Partnership site, 1800 West 48th Ave., Anchorage; *Site 5* (2.3 acres)—619 East Ship Creek Ave., Anchorage; *Site 6* (12.2 acres)—Douglas Management Company, 660 Western Dr., Anchorage; and, *Site 7* (135 acres)—Eklunta Inc., Birchwood Loop Rd. and Birchwood Airport Rd., Anchorage.

The grantee's proposed service area under the ASF would be the Municipality of Anchorage, Alaska, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Anchorage U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include all of the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 160's previously authorized subzone.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive

Secretary at the address below. The closing period for their receipt is November 29, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 16, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: September 19, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–23654 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–552–801]**

### Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review; 2012–2013

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** Effective September 30, 2013.

**SUMMARY:** The Department of Commerce (''the Department'') has received a timely request for a new shipper review (''NSR'') of the antidumping duty (''AD'') order on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam'') that meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for this NSR is August 1, 2012, through July 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0238.

**SUPPLEMENTARY INFORMATION:**

## Background

The AD order on fish fillets from Vietnam was published on August 12, 2003.[1] On September 3, 2013, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(b), the Department received an NSR request from Thanh Hung Co., Ltd. D/B/A Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. (''Thanh Hung'').[2] Thanh Hung certified that it is a producer and exporter of the subject merchandise and that it exported, or has sold for export, subject merchandise to the United States.[3]

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Thanh Hung certified that it did not export subject merchandise to the United States during the period of investigation (''POI'').[4] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Thanh Hung certified that, since the initiation of the investigation, it has never been affiliated with any Vietnamese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), Thanh Hung also certified that its export activities were not controlled by the central government of Vietnam.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Thanh Hung submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

Finally, the Department conducted a U.S. Customs and Border Protection (''CBP'') database query and confirmed the price, quantity, date of sale, and date of entry of the sale at issue. In addition, the Department confirmed that the data on any subsequent shipments corresponds with the information provided by Thanh Hung.[8]

## Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on the documentation provided by Thanh Hung, we find that the request submitted by Thanh Hung meets the requirements for initiation of the NSR for shipments of fish fillets from Vietnam.[9] The POR is August 1, 2012, through July 31, 2013.[10] Absent a determination that the case is extraordinarily complicated, the Department intends to issue the preliminary results of this NSR within 180 days from the date of initiation and the final results within 270 days from the date of initiation.[11]

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an AD rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Thanh Hung that will include a separate-rate section. The review of Thanh Hung will proceed if the response provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of fish fillets.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the requesting company in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Thanh Hung certified that it both produced and exported the subject merchandise, the sale of which is the basis for the new-shipper request for review, we will instruct CBP to permit the use of a bond only for subject merchandise which Thanh Hung both produced and exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

[2] *See* Letter from Thanh Hung, re: Request for New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Review Period—8/1/12–7/31/13, dated September 3, 2013.

[3] *Id.* at 2 and Exhibit 1.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at Exhibits 2, 3, and 4; *see also* Memorandum to the File, from Susan Pulongbarit, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Placing CBP Data on the Record'' (''CBP Memo''), dated concurrently with this notice and herein incorporated by reference.

[8] *See* Memorandum to the File from Scot Fullerton, Program Manager, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: New Shipper Initiation Checklists'' (''Initiation Checklist''), dated concurrently with this notice and herein incorporated by reference; *see also* CBP Memo.

[9] *See* Initiation Checklist.

[10] *See* 19 CFR 351.214(g)(1)(i)(A).

[11] *See* section 751(a)(2)(B)(iv) of the Act.

Dated: September 24. 2013.

**Gary Taverman,**

*Senior Advisor for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–23786 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 21, 2013. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 13–028. Applicant: University of Minnesota, Dept. of Chemical Engineering & Material Science, 421 Washington Avenue SE, Minneapolis, MN 55455. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to study chemical bonds between atoms in bulk crystals and defects near those, which requires aberration-corrected ADF–STEM imaging with sub-0.2 eV resolution EELS, as well as the study of the magnetic and electronic properties of heterostructured magnetic materials, which also requires atomic-resolution EDS. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 8, 2013.

Docket Number: 13–035. Applicant: Colorado State University, Department of Chemistry, 1872 Campus Delivery, Fort Collins, CO 80523–1872. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to determine the uniformity of particle formation, bulk transport and absorption properties of Cu2ZnSnS4 nanoparticles in photovoltaics, the elemental composition of CuSi nanowires, accurate measure of pore structures in plasma formed tubule structures that are less than 50nm, characterization of plasma induced damage to multi-walled carbon nanotubes, grain size and filing mechanisms in PbTiO3 nanotubes, structure and chemical makeup of nanoclusters of iridium or cobalt atoms used industrially as hydrogenation catalysts and structure of gold nanoparticles with a variable number and variety of attached thiolate ligands. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 12, 2013.

Docket Number: 13–038. Applicant: Air Force Institute of Technology, 2950 Hobson Way, Wright-Patterson AFB, OH, 45433–7765. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to study non-biological microelectronics, micro-electromechanical systems (MEMS) as well as nanotechnology materials and devices. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 10, 2013.

Docket Number: 13–039. Applicant: Department of Transportation, Turner Fairbank Highway Research Center, 6300 Georgetown Pike, McClean, VA 22101. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to observe the crystal structure changes in the cement in 3 hydrates, as well as to investigate the causes of premature failures in highway structures. The experiments will involve the study of the rate of setting or hydration of concrete mixtures in which a large portion of the cement is replaced by fly ash from coal burning power plants. The objective is to reduce the amount cement (a major source of greenhouse gases) with a waste product, fly ash, which is produced by coal burning power plants. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 13, 2013.

Docket Number: 13–040. Applicant: Center for Disease Control and Prevention, 2920 Brandywine Road, RM 3000, Atlanta, GA 3041–5539. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to expand the understanding of impacts of tobacco use on individuals as part of U.S. Public Health studies, including how the particle size and composition in the smoke affects the change in type and pulmonary location of cancers prevalent in smokers. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 12, 2013.

Docket Number: 13–041. Applicant: Sanford-Burnham Medical Research, 10901 No. Torrey Pines Road, La Jolla, CA 92037. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to learn how molecules that work inside living cells like Arp2/3 complex, adhesosomes, and ribosomes work together to perform their cellular duties. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 12, 2013.

Dated: September 23, 2013.

**Gregory W. Campbell,**

*Director of Subsidies Enforcement, Import Administration.*

[FR Doc. 2013–23778 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC889**

### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC). See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SSC will meet 9 a.m.—6 p.m. on Tuesday, October 22, 2013; 9 a.m.—6 p.m. on Wednesday, October 23, 2013; and 9 a.m.—2 p.m. on Thursday, October 24, 2013.

**ADDRESSES:**

*Meeting address:* The meeting will be held at the Crowne Plaza Airport Hotel, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (800) 503–5762 or (843) 744–4422; fax: (843) 744–4472.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The following items will be discussed by the SSC during this meeting:

**SSC Meeting, Tuesday, October 22, 2013, 9 a.m. until Thursday, October 24, 2013, 2 p.m.**

1. Address SEDAR planning items including 2014 assessments of red snapper, red porgy, and gag; future assessment priorities; and actions of the SEDAR Steering Committee.
2. Discuss methods of incorporating probabilistic results in fishing level recommendations.
3. Review projections of the Spanish mackerel assessment.
4. Receive an update on the Southeast Fishery Independent Survey (SEFIS) monitoring program.
5. Review biological sampling targets.
6. Review stock assessments of mutton snapper, blueline tilefish, and snowy grouper.
7. Receive a presentation on recent developments in data poor assessment approaches.
8. Review productivity components of the Acceptable Biological Catch (ABC) control rule.
9. Discuss Amendment 22 to the SAFMC Snapper-Grouper FMP addressing a recreational tag program.
10. Receive updates on other ongoing SAFMC amendments and management actions.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. Written comment to be considered by the SSC shall be provided to the Council office no later than one week prior to an SSC meeting. For this meeting, the deadline for submission of written comment is 12 p.m. Tuesday, October 15, 2013. Two opportunities for comment on agenda items will be provided during SSC meetings and noted on the agenda. The first will be at the beginning of the meeting, and the second near the conclusion, when the SSC reviews its recommendations.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 25, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–23762 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC891**

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Caribbean Fishery Management Council's Advisory Panel and Ad Hoc Committee will meet.

**DATES:** The meeting will be held on October 22, 2013, from 10 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at the Verdanza Hotel, 8020 Tartak St. Isla Verde, Puerto Rico 00909.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The AP and Ad Hoc will meet to discuss the items contained in the following agenda:

- Call to Order
- Adoption of Agenda
- Presentation of new model for socio-economic considerations in closed seasons to comply with ACL
- Discussion
- Recommendations to CFMC
- Other Business

The AP and Ad Hoc meeting will convene on October 22, 2013, from 10 a.m. until 4:30 p.m.

The meeting is open to the public, and will be conducted in English. However, simultaneous interpretation (English-Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: September 25, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–23763 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

September 25, 2013.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Publishing the new 12-month cap on duty- and quota-free benefits.

**DATES:** Effective October 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Don Niewiaroski, Jr., International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2496.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Public Law 107–210;

Section 7(b)(2) of the AGOA Acceleration Act of 2004, Public Law 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Public Law 109–432, and section 1, Public Law 112–163, August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); and Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 112–163 extended this special rule for lesser-developed countries through September 30, 2015.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2013 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a) of TRHCA 2006. Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2013, and extending through September 30, 2014 the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,784,195,681 square meters equivalent. Of this amount, 892,097,841 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**Kimberly Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 2013–23777 Filed 9–27–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces; Notice of Federal Advisory Committee Meeting

**AGENCY:** Office of the Assistant Secretary of Defense, DoD.

**ACTION:** Meeting notice.

**SUMMARY:** The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force).

**DATES:** Monday, October 28, 2013–Tuesday, October 29, 2013 from 9:00 a.m. to 5:00 p.m. EDT.

**ADDRESSES:** DoubleTree by Hilton Hotel Washington DC-Crystal City, 300 Army Navy Drive, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 ''Mark as Time Sensitive for October Meeting''. Email correspondence to *joseph.nagorka.ctr@mail.mil*. Denise F. Dailey, Designated Federal Officer; Telephone (703) 325–6640. Fax (703) 325–6710.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

*Purpose of the Meeting:* The purpose of the meeting is for the Task Force Members to convene and gather data from panels and briefers on the Task Force's topics of inquiry.

*Agenda:* (Refer to *http://rwtf.defense.gov* for the most up-to-date meeting information)

**Day One: Monday, October 28, 2013**

9:00 a.m.–9:15 a.m. Welcome, Member Introductions
9:15 a.m.–10:15 a.m. Installation Visit After Action Review
10:15 a.m.–10:30 a.m. Break
10:30 a.m.–11:00 a.m. Moderator Refresher Training for Task Force Members
11:00 a.m.–11:30 a.m. Recommendations of Major Committees on Wounded, Ill, and Injured
11:30 a.m.–12:00 p.m. Briefing on Traumatic Servicemembers' Group Life Insurance (TSGLI)
12:00 p.m.–1:00 p.m. Break for Lunch
1:00 p.m.–2:00 p.m. Special Operations Command (SOCOM) Care Coalition Update
2:00 p.m.–2:15 p.m. Break
2:15 p.m.–3:15 p.m. Line of Duty Department of Defense Instruction Update
3:15 p.m.–3:30 p.m. Break
3:30 p.m.–4:45 p.m. Integrated Disability Evaluation System (IDES) Lawyer Panel
4:45 p.m.–5:00 p.m. Wrap Up

**Day Two: Tuesday, October 29, 2013**

9:00 a.m.–9:15 a.m. Welcome
9:15 a.m.–9:30 a.m. Public Forum
9:30 a.m.–10:45 a.m. VA Consultants Briefing
10:45 a.m.–11:00 a.m. Break
11:00 a.m.–12:00 p.m. Army Remote Care Program Briefing
12:00 p.m.–1:00 p.m. Break for Lunch
1:00 p.m.–2:15 p.m. Physical Disability Board of Review (PDBR) Briefing
2:15 p.m.–2:30 p.m. Break
2:30 p.m.–3:30 p.m. Army National Guard (ARNG) Medical Management Processing System (MMPS) & Reserve Component Managed Care (RCMC) Pilot Briefing
3:30 p.m.–3:45 p.m. Break
3:45 p.m.–4:45 p.m. Army IDES Office Briefing
4:45 p.m.–5:00 p.m. Wrap Up

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the

Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. If individuals are interested in making an oral statement during the Public Forum, a written statement for a presentation of two minutes must be submitted as stated in this notice and it must be identified as being submitted for an oral presentation by the person making the submission. Identification information must be provided and, at a minimum, must include a name and a phone number. Individuals may visit the Task Force Web site at *http://rwtf.defense.gov* to view the Charter. Individuals making presentations will be notified by Wednesday, October 23, 2013. Oral presentations will be permitted only on Tuesday, October 29, 2013 from 9:15 a.m. to 9:30 a.m. EDT before the Task Force. The number of oral presentations will not exceed ten, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Written statements in which the author does not wish to present orally may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the contact information in the **FOR FURTHER INFORMATION CONTACT** section, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements, either oral or written, being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 5:00 p.m. EDT, Monday, October 21, 2013 with the subject of this notice. Statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as ''Time Sensitive for October Meeting.''

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Ms. Heather Moore, (703) 325–6640, by 5:00 p.m. EDT, Wednesday, October 23, 2013.

Dated: September 24, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–23650 Filed 9–27–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14327–000]**

### Pershing County Water Conservation District; Notice of Application Accepted for Filing With the Commission, Intent to Waive Scoping, Soliciting Motions to Intervene and Protests, Ready For Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing a Schedule For Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14327–000.

c. *Date filed:* June 26, 2013.

d. *Applicant:* Pershing County Water Conservation District.

e. *Name of Project:* Humboldt River Hydropower Project.

f. *Location:* On the Humboldt River, near the Town of Lovelock, Pershing County, Nevada. The project would occupy 0.25 acres of Federal U.S. Bureau of Reclamation lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Greg Lyman, Farr West Engineering; 5442 Longley Lane Suite B, Reno, NV 89511; (775) 853–7259; *greg@farrwestengineering.com.*

i. *FERC Contact:* Adam Beeco, (202) 502–8655, or email at *adam.beeco@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14327–000.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The proposed project would utilize the existing U.S. Bureau of Reclamation's Rye Patch dam, gates, and penstocks. The hydropower development would include:* (1) A 16-foot by 16-foot powerhouse; (2) a single Kaplan turbine-generator at the end of one of the existing 48-inch-diameter steel penstocks with an installed capacity of 750 kilowatts; (3) a new 13.4-kilovolt transmission line; and (4) appurtenant facilities. The project would be operated in a run-of-release [1] mode and would have an annual generation of 2900.14 megawatt-hours.

m. Due to the project works already existing and the limited scope of the proposed project site described above, the applicant's close coordination with federal and state agencies during the preparation of the application, and agency recommended preliminary terms and conditions, we intend to waive scoping and expedite the licensing process. Based on the review of the application, resource agency consultation letters including the preliminary terms and conditions, and

[1] The licensee proposes no changes in dam discharge operations or quantities, and would operate the project within the constraints of the irrigation release operation responsibilities.

comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation and land use, aesthetic, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Notice of the availability of the EA. | December 2013. |

Dated: September 20, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–23708 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers: ER10–2602–006; ER10–2604–003; ER10–2603–003; ER10–2609–005; ER10–2606–005.*

*Applicants:* Escanaba Paper Company, Luke Paper Company, Rumford Paper Company, NewPage Energy Services, LLC, Consolidated Water Power Company.

*Description:* Supplement to Notice of Change in Status of NewPage Corporation.

*Filed Date:* 9/18/13.

*Accession Number:* 20130918–5034.

*Comments Due:* 5 p.m. e.t. 10/9/13.

*Docket Numbers: ER13–2074–000; ER13–2074–001.*

*Applicants:* E.ON Global Commodities North America LLC.

*Description:* Supplement to July 31, 2013 and August 16, 2013 E.ON Global Commodities North America LLC tariff filing.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5054.

*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER13–2416–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Notice of Termination of South Kern Solar Project E&P Agreement to be effective 8/16/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5000.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2418–000.

*Applicants:* ITC Midwest LLC.

*Description:* Notice of Termination of ITC Midwest RS 10 to be effective 11/22/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5017.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2419–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Queue Position Y1–001; Original Service Agreement No. 3645 to be effective 8/22/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5022.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2420–000.

*Applicants:* ITC Midwest LLC.

*Description:* Notice of Termination of ITC Midwest RS 11 to be effective 11/22/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5023.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2421–000.

*Applicants:* ITC Midwest LLC.

*Description:* Notice of Termination of ITC Midwest RS 14 to be effective 11/22/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5024.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2422–000.

*Applicants:* ITC Midwest LLC.

*Description:* Notice of Termination of ITC Midwest RS 15 to be effective 11/22/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5025.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2423–000.

*Applicants:* ITC Midwest LLC.

*Description:* Notice of Termination of ITC Midwest RS 100, 101 to be effective 11/22/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5026.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2424–000.

*Applicants:* Portland General Electric Company.

*Description:* Rate Schedule 20. Agreement between PGE and CUB to be effective 9/23/2013.

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5066.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2425–000.

*Applicants:* Black Hills Power, Inc.

*Description: Black Hills Power, Inc. submits Changes to Attachment K to be effective 1/1/2014.*

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5109.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2426–000.

*Applicants:* Black Hills/Colorado Electric Utility Company, LP.

*Description: Black Hills/Colorado Electric Utility Company, LP submits Changes to Attachment K to be effective 1/1/2014.*

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5110.

*Comments Due:* 5 p.m. e.t. 10/15/13.

*Docket Numbers:* ER13–2427–000.

*Applicants:* Cheyenne Light, Fuel and Power Company.

*Description: Cheyenne Light, Fuel and Power Company submits Changes to Attachment K to be effective 1/1/2014.*

*Filed Date:* 9/23/13.

*Accession Number:* 20130923–5111.

*Comments Due:* 5 p.m. e.t. 10/15/13.

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 23, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23721 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13–153–000.

*Applicants:* Buffalo Dunes Wind Project, LLC.

*Description:* Application for Authorization under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Buffalo Dunes Wind Project, LLC.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5158.

*Comments Due:* 5 p.m. e.t. 10/11/13.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG13–59–000.

*Applicants:* Mountain View Solar, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Mountain View Solar, LLC.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5119.

*Comments Due:* 5 p.m. e.t. 10/11/13.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers: ER10–2331–022; ER10–2325–018; ER10–2326–021; ER10–2327–022; ER10–2330–021.*

*Applicants:* J.P. Morgan Ventures Energy Corporation, BE Louisiana LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Utility Contract Funding, L.L.C.

*Description:* JPMorgn Sellers Notice of Non-Material Change In Status re: Noble Great Plains.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5160.

*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER10–3081–005.

*Applicants:* Equilon Enterprises LLC.

*Description:* Equilon Enterprises LLC's Updated Market Power Analysis for the Southwest Region.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5153.

*Comments Due:* 5 p.m. e.t. 11/19/13.

*Docket Numbers:* ER13–96–002.

*Applicants:* Black Hills Power, Inc.

*Description:* Order No. 1000 Compliance Filing to be effective 12/31/9998.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5121.

*Comments Due:* 5 p.m. e.t. 10/21/13.

*Docket Numbers:* ER13–97–002.

*Applicants:* Black Hills/Colorado Electric Utility Co.

*Description:* Order No. 1000 Compliance Filing to be effective 12/31/9998.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5114.

*Comments Due:* 5 p.m. e.t. 10/21/13.

*Docket Numbers:* ER13–105–002.

*Applicants:* NV Energy, Inc.

*Description:* OATT Order No. 1000 Second Compliance Filing to be effective 12/31/9998.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5122.

*Comments Due:* 5 p.m. e.t. 10/21/13.

*Docket Numbers:* ER13–120–002.

*Applicants:* Cheyenne Light, Fuel and Power Company.

*Description:* Order No. 1000 Compliance Filing to be effective 12/31/9998.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5129.

*Comments Due:* 5 p.m. e.t. 10/21/13.

*Docket Numbers:* ER13–2409–000.

*Applicants:* Buffalo Dunes Wind Project, LLC.

*Description:* Buffalo Dunes Wind Project, LLC MBR Tariff to be effective 10/1/2013.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5095.

*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER13–2410–000.

*Applicants:* PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

*Description:* PPL Electric submits revisions to PJM OATT Attachment H–8G to be effective 6/1/2015.

*Filed Date:* 9/20/13.

*Accession Number:* 20130920–5101.

*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER13–2411–000.
*Applicants:* Sierra Pacific Power Company.
*Description:* Rate Schedule No. 27—Annual BPA–GTA Update 2013 to be effective 10/31/2013.
*Filed Date:* 9/20/13.
*Accession Number:* 20130920–5102.
*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER13–2412–000.
*Applicants:* Trans Bay Cable LLC.
*Description:* Submission of Revisions to Appendix I of the Trans Bay Transmission Owner Tariff to be effective 11/23/2013.
*Filed Date:* 9/20/13.
*Accession Number:* 20130920–5103.
*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER13–2413–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Revisions to the OATT & OA re Wind Resource Lost Opportunity Cost Eligibility to be effective 11/19/2013.
*Filed Date:* 9/20/13.
*Accession Number:* 20130920–5112.
*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER13–2414–000.
*Applicants:* Mammoth Three LLC.
*Description:* Petition of Mammoth Three LLC for Approval of Initial Market-Based Rate Tariff to be effective 11/15/2013.
*Filed Date:* 9/20/13.
*Accession Number:* 20130920–5120.
*Comments Due:* 5 p.m. e.t. 10/11/13.

*Docket Numbers:* ER13–2415–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* 09–20–2013 MCP–OTP T–L IA to be effective 8/23/2013.
*Filed Date:* 9/20/13.
*Accession Number:* 20130920–5128.
*Comments Due:* 5 p.m. e.t. 10/11/13.

Take notice that the Commission received the following foreign utility company status filings:

*Docket Numbers:* FC13–13–000.
*Applicants:* Summerhaven Wind, LP.
*Description:* Notification of Self-Certification of Foreign Utility Company Status of Summerhaven Wind, LP.
*Filed Date:* 9/20/13.
*Accession Number:* 20130920–5092.
*Comments Due:* 5 p.m. e.t. 10/11/13.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF13–679–000.
*Applicants:* UMM Energy Partners, LLC.
*Description:* Form 556 of UMM Energy Partners, LLC.
*Filed Date:* 9/19/13.
*Accession Number:* 20130919–5042.
*Comment Date:* None Applicable.

Take notice that the Commission received the following electric reliability filings

*Docket Numbers:* RD13–12–000.
*Applicants:* North American Electric Reliability Corp, Texas Reliability Entity, Inc.
*Description:* Joint Petition of the North American Electric Reliability Corporation and Texas Reliability Entity, Inc., for Approval of Proposed Regional Reliability Standard BAL–001–TRE–01.
*Filed Date:* 09/18/2013.
*Accession Number:* 20130918–5095.
*Comment Date:* 5 p.m. e.t. 10/15/13.

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 23, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23720 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Effectiveness of Exempt Wholesale Generator Status

| | Docket Nos. |
|---|---|
| Chestnut Flats Lessee, LLC | EG13–38–000 |
| Osprey Energy Center, LLC | EG13–39–000 |
| CCFC Sutter Energy, LLC | EG13–40–000 |
| Westbrook Energy Center, LLC | EG13–41–000 |
| SWG Arapahoe, LLC | EG13–42–000 |
| Battery Utility of Ohio, LLC | EG13–43–000 |
| Hazle Spindle, LLC | EG13–44–000 |
| Quantum Auburndale Power, LP | EG13–45–000 |
| Quantum Lake Power, LP | EG13–46–000 |

Take notice that during the month of August 2013, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: September 23, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23749 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ13–12–000]**

### Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on August 29, 2013, Oncor Electric Delivery Company LLC submitted its tariff filing per 35.28(e): Resubmittal of Oncor Tex-La Tariff Rate Changes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on September 26, 2013.

Dated: September 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–23707 Filed 9–27–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–2414–000]**

### Mammoth Three 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 Mammoth Three 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 15, 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 24, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23723 Filed 9–27–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–2409–000]**

### Buffalo Dunes Wind Project, 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 Buffalo Dunes Wind Project, 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 15, 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 24, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23722 Filed 9–27–13; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14376–001]**

### Cave Run Energy, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14376–001.

c. *Date Filed:* July 21, 2013.

d. *Submitted By:* Cave Run Energy, LLC.

e. *Name of Project:* Cave Run Hydroelectric Project.

f. *Location:* On the Licking River, in Rowan and Bath counties, Kentucky. The proposed project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mark Boumansour, Cave Run Energy, LLC, 1401 Walnut St, Suite 301, Boulder, CO 80302; (303) 440–3378; *email—mark@gravityrenewables.com.*

i. *FERC Contact:* Adam Peer at (202) 502–8449; or email at *adam.peer@ferc.gov.*

j. Cave Run Energy, LLC filed its request to use the Traditional Licensing Process on July 21, 2013. Cave Run

Energy, LLC provided public notice of its request on July 26, 2013. In a letter dated September 19, 2013, the Director of the Division of Hydropower Licensing approved Cave Run Energy, LLC's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the Kentucky State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Cave Run Energy, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

m. Cave Run Energy, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–23709 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD13–7–000]**

### Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators; Supplemental Notice of Technical Conference

As announced in the Notice issued on June 17, 2013, the Supplemental Notice issued on July 19, 2013, and the Supplemental Notice issued on August 23, 2013 (August 23 Notice), the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on September 25, 2013 from 9:00 a.m. to approximately 5:00 p.m., to consider how current centralized capacity market rules and structures in the regions served by ISO New England Inc. (ISO–NE), New York Independent System Operator, Inc. (NYISO), and PJM Interconnection, L.L.C. (PJM) are supporting the procurement and retention of resources necessary to meet future reliability and operational needs.[1] The conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This conference is free of charge and open to the public. Commission members may participate in the conference.

An updated final agenda for this conference, including speakers, is attached.

While this conference is not for the purpose of discussing specific cases, the August 23 Notice noted that discussions at the technical conference may address matters at issue in a number of Commission proceedings that are either pending or within their rehearing period and included a list of those proceedings. The following additional Commission proceedings may also involve issues that could be addressed at the technical conference:

- ISO New England Inc. and New England Power Pool, Docket No. ER13–2313
- ISO New England Inc., Docket No. ER13–2266,
- PJM Interconnection, L.L.C., Docket No. ER13–539.

Information on the technical conference will be posted on the Commission's Web site, *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=6944&CalType=%20&CalendarID=116&Date=09/25/2013&View=Listview,* prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about the technical conference, please contact:

Shiv Mani (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8240, *Shiv.Mani@ferc.gov mailto:*

Kate Hoke (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8404, *Katheryn.Hoke@ferc.gov;*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov,*

Dated: September 24, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

**Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators**

**Docket No. AD13–7–000**

**September 25, 2013**

**Final Agenda**

9:00 a.m.–9:15 a.m. Welcome and opening remarks

9:15 a.m.–11:00 a.m. The role of centralized capacity markets in assuring resource adequacy

In the first morning session, ISO New England Inc. (ISO–NE), New York Independent System Operator, Inc. (NYISO), and PJM Interconnection, L.L.C. (PJM) will provide a brief overview of the goals and basic structure of their respective centralized capacity markets, including a discussion of why each region chose key market

[1] While the Commission recognizes that other regions are considering similar issues, this technical conference will focus solely on the centralized capacity markets in the ISO–NE., NYISO, and PJM regions. The Commission may convene conference(s) on capacity market issues in other regions at other times.

design elements and how each market is achieving its stated goals. Each Regional Transmission Organization (RTO)/Independent System Operator (ISO) will have 15 minutes to make its presentation. Independent Market Monitors for each RTO/ISO will be provided ten minutes to provide their independent assessment of the functioning of the capacity market.

A representative from each RTO/ISO and the Independent Market Monitors will be present during the subsequent panels to answer technical questions that arise.

Panelists should be prepared to discuss the following topics and questions:

1. What are the key goals of the existing centralized capacity market in your region?
2. How successful has the current capacity market design been in meeting those goals?
3. What are the metrics used to measure the success of the centralized capacity market?
4. What design elements are key to the functioning of the centralized capacity market in your region? How were those elements derived? How have those elements evolved over time? How does capacity market design account for the interrelationship between design elements?
5. Going forward, what are the key challenges facing centralized capacity markets in your region? How is each RTO/ISO going about addressing those challenges?

Panelists

1. Robert Ethier, ISO–NE
2. Rana Mukerji, NYISO
3. Andy Ott, PJM
4. Joe Bowring, Monitoring Analytics
5. David Patton, Potomac Economics

11:00 a.m.–12:30 p.m. Mechanics of current centralized capacity markets

The second morning session will address basic design elements of centralized capacity markets, such as the forward commitment period, the demand curve and the establishment of locational and regional planning requirements, as well as the interaction among these design elements with energy and ancillary services markets. Panelists will be asked to address these issues in the context of the goals and objectives of the centralized capacity markets.

Panelists should be prepared to discuss the following topics and questions:

1. How effective are the existing centralized capacity markets in assuring that resource adequacy needs are met at just and reasonable rates?
2. What modifications, if any, would you recommend be made to capacity markets in general or to specific capacity market design elements?
3. Centralized capacity market design elements necessarily interact with each other and with the energy and ancillary services markets. Are there problems created by this interaction that should be addressed to improve the functioning of centralized capacity markets or energy markets?
4. Regional capacity markets also interact with each other. What are the implications of regional differences in capacity market designs?
5. What is the impact on centralized capacity markets of transmission system upgrades and expansions? Can transmission planning be more effectively integrated with or accounted for in the design elements of centralized capacity markets?

Panelists

1. Dan Curran, EnerNOC
2. Lee Davis, NRG Energy Inc.
3. Julien Dumoulin-Smith, UBS Investment Research
4. James Jablonski, Public Power Association of New Jersey
5. Richard Miller, ConEd
6. Roy Shanker, Independent Consultant
7. Todd Snitchler, Chairman, Public Utilities Committee of Ohio

12:30 p.m.–1:30 p.m. Lunch

1:30 p.m.–3:00 p.m. Adapting to industry changes

The first afternoon session builds on the previous panel and introduces for discussion the impact of state and federal policy considerations and emerging technologies on the goals and objectives of centralized capacity markets. Panelists will be asked to identify current and potential policy drivers (e.g., environmental regulations, renewable portfolio standards, state resource planning policies, emerging technologies and fuels such as shale gas, price responsive demand and electric storage) and address their impacts on centralized capacity markets.

Panelists should be prepared to discuss the following topics and questions:

1. Do centralized capacity markets effectively accommodate various federal and state policies, such as state resource planning policies, renewable portfolio standards, and compliance with environmental regulations? If not, how can such policy considerations be better accommodated in centralized capacity market design?
2. Are there specific aspects of capacity market design or specific capacity market design elements that create barriers to effective implementation of federal or state resource procurement, planning, energy or environmental policies?
3. Are there aspects of centralized capacity market designs that create barriers to entry for new and emerging technologies to participate in centralized capacity markets? If so, how can those barriers be addressed?
4. How does the changing resource mix (i.e., increased reliance on natural gas-fired generation, increasing market share for variable energy resources and emerging technologies such as distributed resources, and demand response) impact the centralized capacity markets?

Panelists

1. Jeffrey Bentz, New England States Committee on Electricity
2. Robert Erwin, General Counsel, Maryland Public Service Commission
3. James Holodak, National Grid
4. Judith Judson, Electricity Storage Association
5. Shahid Malik, PSEG Energy Resources and Trade
6. William Massey, COMPETE Coalition
7. John Moore, The Sustainable FERC Project
8. Ed Tatum, Old Dominion Electric Cooperative

3:00 p.m.–3:15 p.m. Break

3:15 p.m.–4:45 p.m. Considerations for the future

The second afternoon session will address potential future directions for centralized capacity markets as a resource adequacy mechanism. This panel will focus on whether new mechanisms and design tools could prospectively augment, supplement or substitute for typical centralized capacity market design elements in order to meet current and anticipated market challenges, and how capacity markets can accommodate evolving market developments and future risks. The RTOs/ISOs will be given an opportunity to respond to panelists' comments and address implementation issues.

Panelists should be prepared to discuss the following topics and questions:

1. What are the main challenges facing centralized capacity markets today or that can be anticipated going forward? Are the current centralized capacity market designs able to effectively manage those challenges? If not, what change in current design elements should be pursued going forward?

2. In order to achieve resource adequacy goals, should centralized capacity markets be expected to meet specific reliability and operational system needs (i.e., accommodating new and emerging technologies such as variable energy resources, distributed resources, or demand-side resources)? If so, how should capacity markets be designed to procure resources with specific operational attributes and what should those attributes be?

3. Going forward, should centralized capacity markets be designed to meet additional or different goals than those established to date?

Panelists

1. Peter Cramton, University of Maryland
2. Michael Hogan, The Regulatory Assistance Project
3. Susan Kelly, APPA
4. Michael Schnitzer, Northbridge Group, EPSA
5. Sue Tierney, Analysis Group
6. James Wilson, Wilson Energy Economics

Respondents

1. ISO–NE
2. NYISO
3. PJM

4:45 p.m.–5:00 p.m. Wrap up and closing remarks

[FR Doc. 2013–23719 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL13–91–000; QF83–142–002; QF83–143–002; QF83–144–002; QF92–64–002]**

### Clearwater Paper Corporation; Notice of Petition for Enforcement

Take notice that on September 20, 2013, pursuant to section 210(h) of the Public Utility Regulatory Policies Act of 1978 (PURPA) Clearwater Paper Corporation filed a Petition for Enforcement, requesting the Federal Energy Regulatory Commission (Commission) to initiate enforcement action against the Idaho Public Utilities Commission (IPUC), or in the alternative declare that Final IPUC Order No. 32697 [1] and IPUC Order No. 32802 [2] are inconsistent with PURPA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 11, 2013.

Dated: September 23, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23750 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

[1] *In the Matter of the Commission's Review of PURPA QF Contract Provisions Including the Surrogate Avoided Resource (SAR) and Integrated Resource Planning (IRP) Methodologies for Calculating Avoided Cost Rates,* IPUC Case No. GNR–E–11–03, Order No. 32697 (December 18, 2012).

[2] *In the Matter of the Commission's Review of PURPA QF Contract Provisions Including the Surrogate Avoided Resource (SAR) and Integrated Resource Planning (IRP) Methodologies for Calculating Avoided Cost Rates,* IPUC Case No. GNR–E–11–03, Order No. 32802 (May 6, 2013)

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13519–003]**

### Lock+ Hydro Friends Fund XIX, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On April 2, 2013, Lock+ Hydro Friends Fund XIX, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) Claiborne Lock & Dam on the Alabama River near the town of Monroeville in Monroe County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) a concrete lined intake channel with a trash rack system; (2) a 166.5-foot-long, 165.2-foot-wide powerhouse containing two generating units with a total capacity of 22 megawatts; (3) a 250-foot-long, 165-foot-wide tailrace; (4) a 13.8/115 kilo-Volt (kV) substation; and (5) a 5.5-mile-long, 69kV transmission line. The proposed project would have an average annual generation of 145,850 megawatt-hours, and operate as directed by the Corps.

*Applicant Contact:* Mr. Wayne Krouse, Lock+ Hydro Friends Fund, LLC, 4900 Woodway, Suite 745 Houston, TX 77056; Phone: (877) 556–6566 ext.709

*FERC Contact:* Christiane Casey, *christiane.casey@ferc.gov*, (202) 502–8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters,

without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13519) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 23, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23751 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–546–000]**

### ANR Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on September 9, 2013, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002–2761, filed in Docket No. CP13–546–000, a prior notice request pursuant to sections 157.205, 157.208(b), and 157.211(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to construct approximately 1.34 miles of 16-inch diameter pipeline, construct an associated delivery meter station, modify appurtenant facilities at two locations on its Southwest Mainline system, and improve an existing county road in conjunction with the local government, all located in Lee, Jefferson, and Des Moines County, Iowa (Iowa Fertilizer Project). ANR states that the Iowa Fertilizer Project will deliver 81,000 dekatherms per day to a new nitrogen fertilizer manufacturing plant. ANR estimates the cost of the Iowa Fertilizer Project to be approximately $15 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Linda Farquhar, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002–2761, by telephone at (832) 320–5685, by facsimile at (832) 320–6685, or by email at *linda_farquhar@transcanada.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: September 19, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–23706 Filed 9–27–13; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9901–49–ORD; Docket ID No. EPA–HQ–ORD–2013–0680]**

### Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]

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

**ACTION:** Notice of public comment period and external peer review.

**SUMMARY:** EPA is announcing a 45-day public comment period for the draft document titled, ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' (EPA/600/R–13/214A). EPA is also announcing that Eastern Research Group, Inc., an EPA contractor, will select a group of external experts to conduct an external peer review of the draft document. The document was prepared by the National Center for Environmental Assessment within

EPA's Office of Research and Development (ORD) as part of the Agency's Chemical Safety for Sustainability Research Program.

EPA is releasing this draft document for the purposes of public comment and external peer review. This draft document is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views. The public comment period and the external peer review are separate processes that provide opportunities for all interested parties to comment on the document. When finalizing the draft document, EPA intends to consider the external peer reviewer's comments and any public comments that EPA receives in accordance with this notice.

The draft document and EPA's peer review charge are available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.*

**DATES:** The 45-day public comment period begins September 30, 2013, and ends November 14, 2013. Technical comments should be in writing and must be received by EPA by November 14, 2013.

**ADDRESSES:** The draft ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' is available primarily via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies will be available from Ms. Marieka Boyd by phone: 919–541–0031; fax: 919–541–5078; or email: *boyd.marieka@epa.gov.* If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' (EPA/600/R–13/214A) to facilitate processing of your request.

Comments may be submitted electronically via *www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information, contact Dr. Lyle Burgoon, NCEA; telephone: 919–541–7808; facsimile: 919–685–3473; or email: *burgoon.lyle@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Information About the Project/Document

The Next Generation (NexGen) Risk Assessment project was initiated in 2010 as a multi-year, multi-organization effort to consider new molecular, computational, and systems biology approaches for use in risk assessments. The specific aims of the NexGen effort, described in this draft report, are to: (1) Demonstrate proof of concept that the data and methods from recent advances in biology can inform risk assessment; (2) identify which of the information resources and practices are most useful for particular purposes (value of information); (3) develop decision considerations for use of different types of NexGen data and methods to inform different types of assessments; and (4) identify priority research needs.

The ''Next Generation Risk Assessment: Incorporation of Recent Advances in Molecular, Computational, and Systems Biology [External Review Draft]'' presents the results and lessons learned from the prototypes/case studies for use of molecular, computational, and systems biology data in risk assessment. The prototype results demonstrated proof of concept for an integrated approach to incorporating molecular, computational, and systems biology data in risk assessment and considered various data types for specific assessment purposes. The lessons learned from this project suggested research needs and near- and longer-term implications of incorporating molecular, computational, and systems biology data in risk assessment.

## II. How to Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0680, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), (Mail Code: 28221T), 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- Hand Delivery: The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center's 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. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0680. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *www.epa.gov/epahome/dockets.htm.*

*Docket:* Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy.

Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: September 19, 2013.

**Debra B. Walsh,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. 2013–23679 Filed 9–27–13; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Deletion of Agenda Item From September 26, 2013 Open Meeting

Date: September 25, 2013.

The following item has been adopted by the Commission and deleted from the list of Agenda items scheduled for consideration at the Thursday, September 26, 2013, Open Meeting and previously listed in the Commission's Notice of September 19, 2013.

| *Item No.* | *Bureau* | *Subject* |
|---|---|---|
| 3 | MEDIA | TITLE: BLOOMBERG L.P. Complainant v. COMCAST CABLE COMMUNICATIONS LLC Defendant (MB Docket No. 11–104) SUMMARY: The Commission will consider a Memorandum Opinion and Order to resolve a complaint by Bloomberg L.P. that Comcast Cable communications, LLC violated the *news neighborhooding* condition of the Comcast/NBCU transaction. |

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–23931 Filed 9–26–13; 4:15 pm]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting; Thursday, September 26, 2013

September 19, 2013.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 26, 2013. The meeting is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | WIRELESS TELE–COMMUNICATIONS | TITLE: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; Acceleration of Broadband Deployment: expanding the Reach and Reducing the cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting (WC Docket No. 11–59); Amendment of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers (RM–11688); and 2012 Biennial Review of Telecommunications Regulations (WT Docket No. 13–32) SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to accelerate deployment of wireless infrastructure while at the same time appropriately protecting the Nation's environmental resources. |
| 2 | MEDIA | TITLE: Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule SUMMARY: The Commission will consider a Notice of Proposed Rulemaking regarding the UHF discount to its national television multiple ownership rule. |
| 3 | MEDIA | TITLE: BLOOMBERG L.P. Complainant v. COMCAST CABLE COMMUNICATIONS LLC Defendant (MB Docket No. 11–104) SUMMARY: The Commission will consider a Memorandum Opinion and Order to resolve a complaint by Bloomberg L.P. that Comcast Cable communications, LLC violated the *news neighborhooding* condition of the Comcast/NBCU transaction. |
| 4 | PUBLIC SAFTEY AND HOMELAND SECURITY. | TITLE: Improving the Resiliency of Mobile Wireless Communications Networks SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that seeks comment on proposals to improve consumer choice and facilitate improvements to the resiliency of mobile wireless networks during emergencies. |
| 5 | MEDIA | TITLE: Presentation on the Status of the Low Power FM Open Filing Window SUMMARY: The Media Bureau will present the latest update on progress towards the upcoming October 15-October 29, 2013 open filing window for applicants seeking to operate new Low Power FM radio stations. |

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests

will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu*.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–23932 Filed 9–26–13; 4:15 pm]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0025)

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, 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 the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On July 25, 2013, the FDIC requested comment for 60 days on a proposal to renew the following information collection: Application for Consent to Exercise Trust Powers, OMB Control No. 3064–0025. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of this collection, and again invites comment on this renewal.

**DATES:** Comments must be submitted on or before October 30, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*.
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Kuiper, at the FDIC address above.

**SUPPLEMENTARY INFORMATION:**

#### Proposal To Renew the Following Currently-Approved Collection of Information

*Title:* Application for Consent to Exercise Trust Powers.

*OMB Number:* 3064–0025.

*Form Number:* FDIC 6200/09.

*Frequency of Response:* On occasion.

*Affected Public:* Insured State nonmember banks wishing to exercise trust powers.

*Estimated Number of Eligible Depository Institution Respondents:* 10.

*Estimated Time per Response for Eligible Depository Institutions:* 8 hours.

*Estimated Number of Institutions That Do Not Qualify as Eligible Depository Institution Respondents:* 5.

*Estimated Time per Response for Institutions That Do Not Qualify as Eligible Institutions:* 24 hours.

*Total estimated annual burden:* 200 hours.

*General Description of Collection:* FDIC regulations (12 CFR 333.2) prohibit any insured State nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The exercise of trust powers by a bank is usually considered to be a change in the general character of a bank's business if the bank did not exercise those powers previously. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. State banking authorities, not the FDIC, grant trust powers to their banks. The FDIC merely consents to the exercise of such powers. Applicants use form FDIC 6200/09 to obtain FDIC's consent.

#### Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 24th day of September 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013–23649 Filed 9–27–13; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statement and approved collection of information instrument are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented

on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Cynthia Ayouch—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

*Final approval under OMB delegated authority of the implementation of the following information collection:*

*Report title:* Annual Company-Run Stress Test Projections.

*Agency form number:* FR Y–16.

*OMB control number:* 7100—to be assigned.

*Frequency:* Annual.

*Reporters:* Bank holding companies (BHCs), savings and loan holding companies (SLHCs) [1] with average total consolidated assets of greater than $10 billion but less than $50 billion, and any affiliated or unaffiliated state member bank (SMB) with average total consolidated assets of more than $10 billion but less than $50 billion excluding SMB subsidiaries of covered companies.[2]

*Estimated annual reporting hours:* 223,200 hours, one-time implementation; 28,768 hours, ongoing.

*Estimated average hours per response:* 3,600 hours, one-time implementation; 464 hours, ongoing.

*Number of respondents* [3]*:* BHCs, 43; SLHCs, 8; and SMBs, 11.

*General description of report:* This information collection is authorized pursuant Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that specifically authorizes the Board to issue regulations implementing the annual stress testing requirements for its supervised institutions. 12 U.S.C. 5365(i)(2)(C). More generally, with respect to BHCs, Section 5(c) of the Bank Holding Company Act, 12 U.S.C. 1844(c), authorizes the Board to require a BHC and any subsidiary ''to keep the Board informed as to—(i) its financial condition, [and] systems for monitoring and controlling financial and operating risks. . . .'' Section 9(6) of the Federal Reserve Act, 12 U.S.C. 324, requires SMBs to make reports of condition to their supervising Reserve Bank in such form and containing such information as the Board may require. Finally, with respect to SLHCs, under Section 312 of the Dodd-Frank Act, 12 U.S.C. 5412, the Board succeeded to all powers and authorities of the OTS and its Director, including the authority to require SLHCs to ''file . . . such reports as may be required . . . in such form and for such periods as the [agency] may prescribe.'' 12 U.S.C. 1467a(b)(2).

Obligation to Respond is Mandatory: Section 165(i)(2)(A) provides that ''financial companies that have total consolidated assets [meeting the asset thresholds] . . . and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests.'' Section 165(i)(2)(B) provides that a company required to conduct annual stress tests ''shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.'' 12 U.S.C. § 5365(i)(2)(B).

Confidentiality: As noted under Section 165(i)(2)(C)(iv), companies conducting annual stress tests under these provisions are ''require[d] . . . to publish a summary of the results of the required stress tests.'' 12 U.S.C. 5365(i)(2)(C)(iv). Regarding the information collected by the *Board,* however, as such information will be collected as part of the Board's supervisory process, it may be accorded confidential treatment under Exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). This information also is the type of confidential commercial and financial information that may be withheld under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4). As *required* information, it may be withheld under Exemption 4 only if public disclosure could result in substantial competitive harm to the submitting institution, under *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974).

*Abstract:* In October 2012, the Federal Reserve Board approved two final rules for capital stress testing requirements pursuant to the Dodd-Frank Act. The final rules implemented the Dodd-Frank Act Stress Testing (DFAST) requirements, one for ''covered companies'' and one for ''other financial companies.'' The Federal Deposit Insurance Corporation (FDIC) [4] and the Office of the Comptroller of the Currency (OCC) [5] also issued final rules for DFAST in October 2012 that are nearly identical to the requirements for ''other financial companies'' issued by the Federal Reserve Board.

*Current Actions:* On March 15, 2013, Federal Reserve published a notice in the **Federal Register** (78 FR 16502) requesting public comment for 60 days on the implementation of the FR Y–16. The comment period expired on May 14, 2013. The Federal Reserve received four comment letters addressing the proposed implementation of this information collection. The comments are summarized and addressed below.

**Summary of Public Comments**

The Federal Reserve received four comment letters on the proposed implementation of the FR Y–16: two from financial holding companies, one from a trade organization, and one from a modeling service provider. Some general comments were received regarding the report format, instructions, and the timing of implementation. In addition, the commenters focused on specific data items proposed for collection on the results schedules. In some cases, commenters compared the level of detail required in the proposed FR Y–16 to the requirements of the Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M; OMB No. 7100–0341) applicable to BHCs with $50 billion or more in total assets.[6] Lastly, one commenter asked for clarification regarding whether to incorporate changes from the Federal Reserve's revised approach to risk-based and leverage capital requirements for banking organizations (Revised Approach) into their capital projections under the supervisory scenarios.[7]

As noted in the initial **Federal Register** notice, the Federal Reserve, the OCC, and the FDIC (the agencies) each developed and requested public

[1] SLHCs would not be subject to Dodd-Frank annual company-run stress testing requirements until the next calendar year after the SLHCs become subject to regulatory capital requirements.

[2] ''Covered companies'' are defined as BHCs with at least $50 billion in total assets and nonbank systemically important financial institutions, subject to annual supervisory stress tests and semi-annual company-run stress tests; ''other financial companies'' are defined as BHCs with total consolidated assets over $10 billion but less than $50 billion, SLHCs with assets over $10 billion, and state-member banks with assets over $10 billion, subject to annual company-run stress tests.

[3] Correction to the number of respondents noted in the initial **Federal Register** notice: BHCs, 44; SLHCs, 8; and SMBs, 10.

[4] October 15, 2012 (77 FR 62417).

[5] October 9, 2012 (77 FR 61238).

[6] The FR Y–16 reporting requirements are tailored to the $10-$50 billion companies and require significantly less granular reporting segmentation relative to the FR Y–14A Summary Schedule that companies with greater than $50 billion in assets use to report the results of their company-run stress tests.

[7] *http://www.federalreserve.gov/newsevents/press/bcreg/20130702a.htm.*

comment on nearly identical reporting forms[8] to implement the mandatory Dodd-Frank reporting requirements for the $10–$50 billion companies. Accordingly, the Federal Reserve has continued to work closely with these agencies in considering all public comments received. The following is a detailed discussion of the comments received.

**Detailed Discussion of Public Comments**

*A. General Comments*

In order to ensure data consistency, the Federal Reserve proposed to define or map the FR Y–16 reporting requirements to the mandatory Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) and the Consolidated Report of Condition and Income (Call Report) (FFIEC 031/041; OMB No. 7100–0036) line items and organize the data in a similar (but not identical) fashion to the FR Y–9C or Call Report, wherever possible. Other reporting conventions, such as technical reporting instructions, were also designed to be consistent with the FR Y–9C or Call Report.

Two commenters indicated that many firms do not currently conduct stress test exercises using the FR Y–9C or Call Report segmentation of data and format. These commenters asserted that it would be a significant challenge to map their current internal stress testing processes to the FR Y–9C or Call Report format. Accordingly, these commenters requested the Federal Reserve and the other agencies consider further delaying implementation of their respective reporting requirements and limiting the data submission requirements to only the 12 line items requested for each scenario in the proposed FR Y–16 summary schedule. Another commenter supported the FR Y–9C or Call Report segmentation, asserting that using the proposed FR Y–16 segmentation and reporting format is consistent with its internal approach to modeling.

The Federal Reserve believes that the proposed reporting forms and timeframe would not place undue burden on institutions. Notably, implementation of the stress test requirements has already been delayed for the vast majority of $10-$50 billion companies.[9] Furthermore, the FR Y–16 report will follow the precedent established by the FR Y–14 with respect to utilizing the FR Y–9C reporting as the basis for data segmentation requirements.

The consistent application of data definitions is an overarching FR Y–16 requirement in order to ensure that the Federal Reserve, the other agencies, FR Y–16 report filers, and the public would be able to interpret and understand the data sources and results, particularly when mandatory company disclosure of the summary results under the severely adverse scenario becomes effective in 2015. The existing FR Y–9C and Call Report formats provide a format that is well-understood and utilized by Federal Reserve and the industry. Using the FR Y–9C and Call Report reporting format would also ensure a high level of consistency for the data provided and would facilitate the assessment of the results.

The Federal Reserve will utilize the proposed FR Y–16 reporting segmentation of data based broadly on the FR Y–9C and Call Report data segmentations and definitions as presented in the proposed reporting form and instructions. Further, in order to ensure consistency between the proposed FR Y–16 instructions and the instructions for the FR Y–9C and Call Report, the Federal Reserve has revised the presentation format of the proposed FR Y–16 to provide line-by-line instructions consistent with the FR Y–9C and Call Report, wherever practical.

In addition, one commenter suggested the application of generalized, bank-developed loss assumptions for immaterial portfolios. The commenter noted that an immaterial portfolio exception is allowed for firms with greater than $50 billion in assets for the FR Y–14 submissions and that this exception would reduce burden on $10-$50 billion companies. While the FR Y–14 Q/M for BHCs with $50 billion or more in total assets allow for optional reporting of immaterial data for certain schedules, these data are *input* data used by the Federal Reserve to conduct supervisory stress tests. No materiality reporting thresholds have been defined for the *output* data for company-run stress tests for these larger companies.[10] The Federal Reserve considered the burden on institutions for internally calculating losses for immaterial portfolios for the $10–$50 billion companies and determined that providing a safe harbor that defines immaterial portfolios, where no or little consideration of the risk of these portfolios is undertaken, would be contrary to the purpose of a company-run stress test and could unintentionally mask or cause institutions to erroneously conclude that the aggregation of immaterial portfolios would always pose little or no risk to an institution. Although stress testing should be applied to all exposures, the same level of rigor and analysis may not be necessary for lower-risk, immaterial portfolios.[11] For such portfolios, it may be appropriate for a company to use a less sophisticated approach for its stress test projections, assuming the results of that approach are conservative and well-documented. Accordingly, the Federal Reserve notes that immaterial portfolios should not be subject to an exemption from the FR Y–16. The proposed interagency supervisory guidance on implementing Dodd-Frank Act company-run stress tests for the $10-$50 billion companies offers suggestions on appropriate methodologies for estimating losses and revenues associated with immaterial portfolios.[12]

*B. Data Items—Results Schedule*

Balance Sheet

One commenter requested reporting common stock, retained earnings, surplus, and other equity components as a single line item. The commenter asserted that separately reporting these four elements of capital would add no value for the purposes of understanding projected regulatory capital or tangible common equity. The Federal Reserve will combine the aforementioned capital components into one line item to be reported as ''equity capital.''

Two commenters stated that separating 1–4 family construction loans from all other construction loans would require more detailed reporting for the FR Y–16 than what is required for the larger firms that report using the FR Y–14A. Segmentation of data is particularly relevant to these smaller organizations since they have material concentrations in this product type and a significant amount of the industry's losses during the most recent economic downturn emanated from this product. These data would provide necessary information for the institutions to effectively manage risk and appropriately assess and plan for their capital needs. Therefore, this reporting requirement is being implemented as proposed.

[8] There are no material differences among the agencies' proposed reporting forms.

[9] October 12, 2012 (77 FR 62396)-(12 CFR 252.153, 252.157).

[10] If a BHC does not complete the schedules for immaterial portfolios for the FR Y–14 Q/M collection of data to run supervisory stress tests, the Federal Reserve assigns losses to the immaterial portfolios in a manner consistent with the given scenario to produce supervisory estimates.

[11] Immaterial portfolios are defined as those that would not present a consequential effect on capital adequacy under any of the scenarios provided.

[12] *http://www.federalreserve.gov/newsevents/press/bcreg/20130730a.htm.*

One commenter stated that gathering available-for-sale (AFS) and held-to-maturity (HTM) balances for U.S. government obligations and obligations of government sponsored entities (GSE) would require more detailed reporting for the FR Y–16 than what is required for the FR Y–14A. Another commenter suggested separating GSE obligations from other government obligations on the FR Y–16 balance sheet consistent with the treatment on the FR Y–9C and Call Report income statement.

While the FR Y–14A collects only total AFS and HTM balances on the balance sheet schedule, the FR Y–14 reporting series requires more granular data than proposed for the FR Y–16 on government securities and GSE exposures through other schedules within the report. In addition, the reporting requirements for the FR Y–9C and Call Report balance sheet require more detailed information on AFS and HTM GSE obligations relative to the reporting requirements for the FR Y–16. Further, the FR Y–14A also collects *other than temporary impairment* (OTTI) at the Committee on Uniform Security Identification Procedures level for GSE obligations that have associated OTTI losses, resulting in significantly more granular reporting requirements in these instances relative to the proposed FR Y–16 reporting requirements. Accordingly, the Federal Reserve will implement as proposed the reporting requirements related to AFS and HTM securities and for U.S. government obligations and obligations of GSEs. This approach will facilitate projections of net income and regulatory capital over the planning horizon.

Several commenters stated that the level of detail required by the balance sheet memoranda items were not informative or necessary to the loss estimation process, or entailed more detail than what was required by the FR Y–14A. Specific memoranda items that were cited by commenters included troubled debt restructurings and loans secured by 1–4 family residential properties in foreclosure. Based on this comment, the Federal Reserve also evaluated the utility of another balance sheet memoranda item: loans and leases guaranteed by either U.S. government or GSE guarantees (i.e., non-FDIC loss sharing agreements). The Federal Reserve agrees that these memoranda data items are already captured within the FR Y–16 reporting requirements for loans and leases and that eliminating these items from the reporting template would not affect an institution's ability to project pre-provision net revenue, net income, or regulatory capital in order to assess their capital needs under stressed conditions. Accordingly, the Federal Reserve will eliminate these three proposed supplemental balance sheet memoranda reporting items.

One commenter requested combining retail and wholesale funding into one line item for total funding, suggesting that separating these types of deposits from one another would involve a disproportional amount of work and would affect other company-run models, thereby adding unnecessary complexity and burden.

The breakdown of deposits between retail and wholesale is facilitated through the subsidiary bank Call Report data and the proposed FR Y–16 instructions indicate that institutions should use the Call Report segmentation definitions to project these line items. In addition, retail and wholesale funding have historically reacted differently under stressed economic conditions and projecting the retail and wholesale deposit structure throughout the planning horizon as proposed would provide useful information to the institutions and the Federal Reserve with respect to how an institution internally assesses capital adequacy, plans for their capital needs, and manages risk. Therefore, the Federal Reserve will implement this reporting requirement as proposed.

The same commenter noted that separately modeling average rates for each type of deposit would also involve a significant amount of work and potentially affect other company-run models. The commenter's observation highlighted a departure in the FR Y–16 from the reporting format and data segmentation used in the FR Y–9C and Call Report. The Federal Reserve agrees that gathering data at a level of granularity in order to calculate and project average rates under the three scenarios for various asset and liability items (e.g., total loans, securities, retail funding, wholesale funding, interest bearing deposits, trading liabilities, and other liabilities) could involve a significant amount of effort and could potentially affect other models that firms utilize. Furthermore, the average rate information is not a necessary data input to project losses, pre-provision net revenue, or capital. The additional burden placed on institutions to calculate the projected average rates could unnecessarily distract institutions from the primary goal of the annual company-run stress test—to effectively estimate the possible impact of an economic downturn on a firm's capital position in order to plan for capital needs and identify and manage risk. Therefore, the Federal Reserve will remove all proposed average rate memoranda items from the balance sheet schedule of the FR Y–16.

Income Statement

Two commenters requested eliminating the income statement memoranda item for net gains (losses) on sales of other real estate owned (OREO). One commenter noted that this element could effectively be combined with forecasting of other OREO expenses. The other commenter stated that the level of detail for this element is more granular than what is required for the FR Y–14A report. Gains or losses on OREO are captured in the pre-provision net revenue metrics worksheet of the FR Y–14A schedule; therefore, this requirement would not be more burdensome for the $10-$50 billion companies. Nevertheless, the Federal Reserve acknowledges that gains and losses on OREO would already be captured within the noninterest income statement memoranda item ''itemize and describe amounts greater than 15% of noninterest income'' or in ''itemize and describe amounts greater than 15% of noninterest expense'' when the amount meets the 15% threshold required by the proposed FR Y–16. Therefore, the Federal Reserve will remove the proposed line item segmentation for ''Net gains (losses) on sales of other real estate owned'' memoranda item on the income statement as this data item would be appropriately captured under another line item when the gain or loss amount exceeds 15% of other income or expense.

*C. Regulatory Capital*

One commenter asked for clarification regarding the calculation and reporting of regulatory capital and risk-weighted assets (RWAs), noting the expectation that capital and RWA calculations and definitions would change over the planning horizon as new rules are implemented (specifically noting new definitions when the Federal Reserve's Revised Approach is adopted). In addition, this commenter also requested clarification on the calculation of tier 1 non-common capital elements in the proposed reporting form.

Tier 1 common equity is not defined by regulation or rule for institutions with total assets of less than $50 billion. Generally, a $10–50 billion company should measure its regulatory capital levels and regulatory capital ratios for each quarter in accordance with the rules that would be in effect during that quarter. With the Revised Approach, companies subject to the Federal Reserve's rules implementing Dodd-Frank Act stress tests would need to

measure their regulatory capital levels and regulatory capital ratios for each quarter in accordance with the transition arrangements in the Revised Approach.[13] Thus, incorporating the Revised Approach into the 2014 stress test cycle would require $10-$50 billion companies to transition estimated capital levels and ratios to the definitions from the Revised Approach in their projection of the last four quarters of the planning horizon.

Requiring $10–$50 billion companies to transition to the Revised Approach during the planning horizon for the 2014 test and model alternative capital calculations in the middle of the planning horizon would add operational and regulatory complexity and increase the potential or likelihood of erroneous calculations or assumptions. This complexity and increased risk of error could distract a $10–$50 billion company from focusing on conducting company-run stress tests that capture salient risks to the company and provide a meaningful forward-looking assessment for the purposes of assessing the company's capital adequacy under various scenarios. Finally, as the $10–$50 billion companies are not required to publicly disclose the results of the stress tests conducted in the 2014 stress test cycle, the additional burden of implementing the Revised Approach in the 2014 stress test cycle will not provide the public with insight into a firm's capital adequacy under hypothetical stressful circumstances.

For these reasons, the Federal Reserve has, in an interim final rule, provided $10–$50 billion companies with a one-year delay in incorporating the Revised Approach into their Dodd-Frank Act company-run stress tests. Specifically, $10–$50 billion companies are not required to incorporate the changes from the Revised Approach into their company-run stress test conducted in the stress test cycle that begins on October 1, 2013. Instead, $10–50 billion companies, as described under the interim final rule, will be required to estimate their pro forma capital levels and ratios over the planning horizon using the capital rules in place as of the beginning of the 2014 stress testing cycle on October 1, 2013.

There are three line items in the proposed FR Y–16 report that would be specifically affected by the Revised Approach: tier 1 common equity capital, non-common capital elements, and RWAs. Consistent with the requirements of the proposed interim final rule, the Federal Reserve will remove the tier 1 common and non-common capital line items, and the associated equity ratios, from the Results Schedule for the initial respondent panel that would be submitting a report for the 2014 stress test cycle. The Federal Reserve will provide information regarding the capital and RWA calculations in the final instructions.

*D. Technical Changes/Other Items*

In response to a few technical (non-substantive) comments received, some additional minor changes will be made in the final reporting form and instructions. These changes include clarified reporting instructions for income statement memoranda items; new detailed technical reporting instructions and the elimination of the contact information schedule as this information will be collected through the Results Schedule cover sheet and the Federal Reserve data collection application.

Board of Governors of the Federal Reserve System, September 24, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2013–23727 Filed 9–27–13; 8:45 am]

**BILLING CODE 6210–01–P**

[13] *http://www.federalreserve.gov/newsevents/press/bcreg/20130702a.htm.*

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB and Submission to OMB with Request for Comments

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under Office of Management and Budget (OMB) delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On June 25, 2013, the Federal Reserve published a notice in the **Federal Register** (78 FR 38033) requesting public comment for 60 days to extend, with revision, the Capital Assessments and Stress Testing information collection. The comment period for this notice expired on August 26, 2013. The Federal Reserve received 17 comment letters. The substantive comments are summarized and addressed below.

**DATES:** Comments are to be submitted on or before November 29, 2013.

Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

**ADDRESSES:** You may submit comments identified by FR Y–14A/Q/M, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed- Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Cynthia Ayouch—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829.

Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503. Final approval under OMB delegated authority to extend, with revision, the following report:

*Report title:* Capital Assessments and Stress Testing information collection.

*Agency form number:* FR Y–14A/Q/M.

*OMB Control number:* 7100–0341.

*Effective Date:* September 30, 2013.

*Frequency:* Annually, semi-annually, quarterly, and monthly.

*Reporters:* Large banking organizations that meet an annual threshold of $50 billion or more in total consolidated assets (large Bank Holding Companies or large BHCs), as defined by the Capital Plan rule (12 CFR 225.8).[1]

*Estimated annual reporting hours:* Summary, 61,680 hours; Macro scenario, 1,860 hours; Counterparty credit risk (CCR), 2,520 hours; Basel III/Dodd-Frank, 660 hours; and Regulatory capital, 600 hours. FR Y–14Q: Securities risk, 1,200 hours; Retail risk, 1,920 hours; Pre-provision net revenue (PPNR), 85,320 hours; Wholesale corporate loans, 6,720 hours; Wholesale commercial real estate (CRE) loans, 6,480 hours; Trading risk, 46,224 hours; Basel III/Dodd-Frank, 2,640 hours; Regulatory capital, 4,800 hours; Operational risk, 3,360 hours; Mortgage Servicing Rights (MSR) Valuation, 864 hours; Supplemental, 960 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,216 hours. FR Y–14M: Retail 1st lien mortgage, 153,000 hours; Retail home equity, 146,880 hours; and Retail credit card, 91,800 hours. FR Y–14 On-Going Automation for existing respondents: 9,120 hours.

*Estimated average hours per response:* FR Y–14A: Summary, 1,028 hours; Macro scenario, 31 hours; CCR, 420 hours; Basel III/Dodd-Frank, 22 hours; and Regulatory capital, 20 hours. FR Y–14Q: Securities risk, 10 hours; Retail risk, 16 hours; PPNR, 711 hours; Wholesale corporate loans, 60 hours; Wholesale CRE loans, 60 hours; Trading risk, 1,926 hours; Basel III/Dodd-Frank, 22 hours; Regulatory capital, 40 hours; Operational risk, 28 hours, MSR Valuation, 24 hours; Supplemental, 8 hours; and Retail FVO/HFS, 16 hours. FR Y–14M: Retail 1st lien mortgage, 510 hours; Retail home equity, 510 hours; and Retail credit card, 510 hours. FR Y–14, On-going revisions for existing respondents, 480 hours.

*Number of respondents:* 30.

*General description of report:* The FR Y–14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which requires the Federal Reserve to ensure that certain BHCs and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)). Such exemptions would be made on a case-by-case basis.

*Abstract:* The data collected through the FR Y–14A/Q/M schedules provide the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including continuous monitoring of BHCs' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

The semi-annual FR Y–14A collects large BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[2] The quarterly FR Y–14Q collects granular data on BHCs' various asset classes and PPNR for the reporting period. The monthly FR Y–14M comprises three loan- and portfolio-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections. The FR Y–14Q and the FR Y–14M are used to support supervisory stress test models and for continuous monitoring efforts.

*Current actions:* On June 25, 2013, the Federal Reserve published a notice in the **Federal Register** (78 FR 38033) requesting public comment for 60 days on the revision of the FR Y–14 information collection for September 30, 2013. Most of the proposed changes affected the FR Y–14A, particularly the Summary and Basel III schedules, in accordance with proposed capital rulemakings published for comment in August 2012.[3] Other proposed changes included adding items to enhance supervisory models, removing items to reduce burden, and modifying items. The comment period expired on August 26, 2013. All substantive comments are summarized and addressed below.

**Summary of Comments**

The Federal Reserve received 17 comment letters addressing the proposed changes to this information collection: 12 from BHCs, 3 from trade associations, and 2 from private companies. Many of the comments received requested clarification of the instructions for the information to be reported, or were technical in nature. These comments will be addressed in the final FR Y–14 reporting instructions.

The Federal Reserve also received four comments not directly related to the proposed revisions to the FR Y–14 information collection regarding suggestions to (1) provide the adverse and severely adverse macroeconomic scenarios and any trading and counterparty component earlier than they have been provided in the past; and (2) use the September Blue Chip Consensus instead of the October Blue Chip Consensus to inform the macroeconomic scenarios provided.

[1] The Capital Plan rule applies to every top-tier large BHC. This asset threshold is consistent with the threshold established by section 165 of the Dodd-Frank Act relating to enhanced supervision and prudential standards for certain BHCs.

[2] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[3] 77 FR 52792, published August 30, 2012, proposed to revise and replace the Federal Reserve's risk-based and leverage capital requirements to be consistent with the most recent Basel requirements.

Because these comments do not relate directly to this information collection, the Federal Reserve is not addressing them now but may consider them in connection with future modifications to its capital planning and stress testing rules. The following is a detailed discussion of aspects of the proposed FR Y–14 collection for which the Federal Reserve received one or more substantive comments and an evaluation of, and responses to the comments received.

**General Comments**

In general, commenters expressed concerns about the overall expansion of the information collection, timing of the implementation of new items, and the burden new items impose on reporters. Specifically, several commenters stated that the FR Y–14 currently has a high level of granularity, which is increasing with the proposed changes, and recommended that the Federal Reserve revise the current collection and limit proposed changes to include only the most relevant information. The Federal Reserve understands and appreciates the importance of minimizing burden to the public and regularly reviews the information requested by the FR Y–14A/Q/M to ensure all data elements are essential to the supervisory and company-run stress testing processes and the ongoing supervision of these companies. Specific data elements have previously been removed both as a result of these reviews and in response to public comments.

In regard to overall timing, several commenters requested that going forward the Federal Reserve either set a mandatory minimum amount of time between the finalization of changes to the FR Y–14 and the implementation date or alter the timeframe by which proposals are issued and finalized. The Federal Reserve recognizes the challenges associated with implementing changes to FR Y–14 reporting requirements in a timely manner when the changes are finalized close to the reporting deadline. The Federal Reserve is carefully considering various longer-term options to address this comment that would increase the time between the finalization of changes to the FR Y–14 and their implementation date.

Commenters also suggested several improvements to the current Frequently Asked Questions (FAQ) process, including establishing a searchable repository, setting a specific schedule for responding to questions, and integrating questions and responses into the FR Y–14 instructions. The Federal Reserve is continually working to improve communication with respondents and, as noted in the initial **Federal Register** notice, has incorporated all relevant historical FAQs into the proposed instructions. The incorporation of relevant comments and questions related to the FR Y–14 into the instructions will continue on a regular basis with a goal of ending the FAQ process as soon as practicable.

Several commenters requested that implementation of the changes related to the revised regulatory capital approach [4] (Revised Approach) be delayed to allow time for updating and integrating their financial reporting systems. Another commenter suggested that companies that are not subject to the Board's advanced approaches capital rules should have significantly reduced reporting requirements.

Because the Capital Plan Rule issued on November 22, 2011, requires BHCs to calculate the regulatory capital ratios reported in its capital plan according to the current Regulation Y requirements or ''any successor regulation,'' the Federal Reserve will not delay the implementation of the proposed changes or reduce reporting requirements. The Federal Reserve has, however, engaged in substantial industry outreach regarding the proposed schedules and the vast majority of items on the schedules are unchanged from the proposal. In addition, the Federal Reserve is publishing two interim final rules that provide transition arrangements to the Revised Approach.

As mentioned in prior public comment letters regarding proposed FR Y–14 changes, commenters requested that the Federal Reserve provide respondents a stated, minimum amount of time to integrate data from mergers or acquisitions. Additionally, commenters requested the Federal Reserve limit the amount of historical data required to be reported from portfolios acquired through a merger or acquisition. The Federal Reserve is carefully considering the appropriate level of guidance to provide for reporting such data. However, several firms that have completed a merger or acquisition have been granted extensions to allow additional time to reach full compliance with the schedules.[5] The Federal Reserve will continue to consider requests for extension or modification on a case-by-case basis rather than establishing a fixed transition period in the reporting instructions.

Because of required reconciliation between the FR Y–14Q and the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128), several commenters requested that the filing deadline of the FR Y–14Q be after the FR Y–9C deadline for the corresponding quarter. After careful consideration, the Federal Reserve will change the filing deadline of the FR Y–14Q to seven calendar days after the FR Y–9C deadline, effective for the December 31, 2013, as of date. The new filing deadline will be 47 calendar days after the March 31, June 30, and September 30 as of dates, and 52 calendar days after the December 31 as of date, unless that day falls on a weekend or a holiday, in which case the deadline is the next business day. However, the Federal Reserve will continually weigh the improvements in reporting as a result of this change against the costs to the Federal Reserve.

Commenters also suggested several improvements to the current Frequently Asked Questions (FAQ) process, including establishing a searchable repository, setting a specific schedule for responding to questions, and integrating questions and responses into the FR Y–14 instructions. The Federal Reserve is continually working to improve communication with respondents and, as noted in the initial **Federal Register** notice, has incorporated all relevant historical FAQs into the proposed instructions. The incorporation of relevant comments and questions related to the FR Y–14 into the instructions will continue on a regular basis with a goal of ending the FAQ process as soon as practicable.

One commenter requested that the technical submission instructions be included along with the schedule instructions on the Federal Reserve's public Web site. Also, several commenters requested that the edit checks across schedules be altered to reduce the number of failures by changing logic and tolerance levels and considering data gaps. The Federal Reserve will post the technical instructions, as well as make appropriate adjustments to the edit check process.

Numerous commenters noted that the proposed templates and instructions implied that all items related to capital and risk weighted assets (RWA) would be based on the proposed Revised Approach, and recommended that the Federal Reserve base these on the Revised Approach. The Federal Reserve will adjust the proposed templates and

[4] *See* 12 CFR parts 208, 217, and 225.

[5] Examples of such letters can be found on the Board's public Web site *http://www.federalreserve.gov/bankinforeg/LegalInterpretations/bhc_changeincontrol2013.htm.*

instructions to comply with the Revised Approach.[6]

Finally, several commenters noted that the instructions to several schedules specifically reference FICO scores, which could be considered an endorsement of FICO and its products. These commenters further noted that respondents should be able to report credit scores other than the FICO score. Because existing data items have been used to calibrate and validate current supervisory models, and the data as of September 30 are used as a benchmark for these models, the Federal Reserve will remove the requirement to submit or map to FICO scores in the schedules is effective with data as of October 31, 2013. Beginning with the data as of October 31, 2013, for the FR Y–14M and December 31, 2013, for the FR Y–14Q, respondents will have the option to continue reporting credit score items as in prior submissions or to begin submitting other credit scores with sufficient supporting documentation describing the reported credit score. To collect additional information regarding the use of credit scores and to further refine a response to this comment that minimizes burden to respondents, the Federal Reserve is extending the comment period on credit score-related items for an additional 60 days from publication of this **Federal Register** notice. The appropriate schedule changes related to credit score collection would be effective for the March 31, 2014, as of date. See the Supplementary Information section below for additional information.

**FR Y–14A**

The majority of comments received regarding the FR Y–14A requested clarification of item definitions and will be addressed in the final instructions. Some comments, however, suggested modifications to data items and are addressed below. As noted in the initial **Federal Register** notice, the Federal Reserve stated that the proposed items related to the Revised Approach in the Summary schedule would be modified to align with the final rulemaking. Accordingly, several of these items will be modified, added and deleted to be consistent with the final Revised Approach.

**Summary Schedule**

*Balance Sheet Worksheet.* One commenter recommended that the proposed item Other Liabilities be split into Federal Funds Purchased & Repurchase Agreements and Non-Interest Bearing Other Liabilities. The Federal Reserve will split Other Liabilities into Federal Funds & Repurchase Agreements and Other Liabilities. Another commenter requested that the column collecting information for the as of date be added back to the schedule. The collection of 23 of the 30 asset categories for the as of date have been moved to the Supplemental schedule, and the remaining 7 are reported on the FR Y–9C.

*General and Advanced RWA.* One commenter requested that the items in the Memoranda for Derivatives Contracts section of the General RWA worksheet have a materiality threshold to alleviate burden for respondents that have non-material derivatives portfolios. The Federal Reserve believes these items are essential regardless of size for its analysis of companies' RWA and notes that the items are required to be reported on the FR Y–9C without a materiality threshold. The same commenter requested that the Federal Reserve allow respondents to submit the items on the General and Advanced RWA worksheets in a more aggregated form. The Federal Reserve will not make this change as the items on the General and Advanced RWA worksheets are presented in accordance with the Revised Approach.

*Capital Worksheets.* One commenter noted that all three proposed Capital worksheets (General, Advanced Approaches, and Revised) would have required respondents to report their RWA according to the standardized approach. In an effort to increase consistency with the FR Y–9C, the Federal Reserve reorganized the structure of the Capital worksheets, and in doing so has addressed the comment. Specifically, the General, Advanced Approaches and Revised Capital worksheets have been collapsed into one Capital worksheet that allows respondents to submit capital projections according to all three capital rules, which are outlined in different sections of the worksheet. Another commenter suggested that formulas be added to the Capital worksheets that would convert reported nominal capital line item amounts according to the transition periods outlined in the Revised Approach so that the calculated total capital would reflect the appropriate transition periods. The Federal Reserve will replace the formulas for the subtotals of capital components and total capital with required line items in which respondents would input these subtotal and total amounts, reflective of the Revised Approach transition provisions for a given quarter.

*PPNR Worksheets.* One commenter noted that the Average Rates Earned section for Interest Income on the PPNR Net Interest Income (NII) worksheet does not collect average rates for nonaccrual loans. The Federal Reserve will add an item, Nonaccrual Loans, to the Average Rates Earned section for Interest Income. Also regarding the PPNR NII worksheet, one commenter noted that item 47, Other Liabilities, in the Average Liability Rates section should always be reported as zero. The Federal Reserve will remove the item. Another commenter expressed a lack of clarity regarding proposed line items 89A, Curve, and 89B, Index Rate, on the PPNR Metrics worksheet. The Federal Reserve will make the following changes: remove the basis point reporting unit requirement from item 89A; and split item 89B with two items—Index Rate and Spread (Relative to Index Rate). The same commenter was seeking guidance on the proposed item Residential Home Equity Originations Industry Market Size—Volume of the PPNR Metrics Worksheet, noting that these data would be difficult to report. After consideration of the potential cost expressed by the commenter, the Federal Reserve will remove this item.

**Basel III Schedule**

One commenter requested that the Federal Reserve either shorten the forecast period in the Basel III Schedule or provide macroeconomic scenario projections beyond the current 13 quarter projection. The instructions state that respondents are to generate their own macroeconomic scenario variables beyond the Supervisory Baseline scenario projections. Additionally, respondents in past CCAR exercises have largely complied with these reporting requirements in prior submissions of the FR Y–14A Basel III Schedule.

**Counterparty Schedule**

Several commenters expressed concern over the increase in required data submission associated with the proposed expansion of one worksheet from top 200 to top 95 percent of counterparties by credit value adjustment, and requested that the Federal Reserve set a materiality threshold. The Federal Reserve believes this level of granularity is necessary to capture a firm's total exposure, and that materiality considerations should apply to the total exposure across all counterparties, not to individual counterparties. Furthermore, the

[6] For additional guidance regarding how schedules should be populated regarding capital and RWA, see 12 CFR 225.8; 12 CFR part 252, subparts F, G, and H.

instructions have been updated to report counterparties within the same netting set as one consolidated entry as opposed to listing the individual counterparties within the netting set, which can decrease the level of granularity. Additionally to offset the increased reporting burden, the Federal Reserve will remove two worksheets that collect counterparty-level information, as initially proposed. One commenter requested that central counterparties (CCPs) be excluded from the supervisory data collection because they have multiple levels of risk mitigation. The Counterparty schedule collects counterparty data based on the size of the exposure and not the probability of loss, and the Federal Reserve will retain the requirement to report information for CCPs.

**Operational Risk Schedule**

One commenter stated that the proposed combination of Operational Risk worksheets on the Summary Schedule would require a level of granularity that would decrease the relevance of the data and requested that the Federal Reserve remove this collection as a requirement. The proposal involved simply combining two worksheets into one worksheet and the data required to be reported on the proposed combined worksheet is identical to the data required previously. The proposed worksheet maintains the flexibility for respondents to determine the appropriate level of granularity that fully captures projected operational risk losses.

**FR Y–14Q**

The majority of comments received regarding the FR Y–14Q requested clarification of item definitions and will be addressed in the final instructions. Some comments, however, suggested modification to data items and are addressed below.

**PPNR Schedule**

The Federal Reserve will modify the FR Y–14Q PPNR Schedule to reflect the changes made to the PPNR worksheets in the FR Y–14A Summary Schedule, as described above.

**Trading Schedule**

One commenter requested that the Index Tranches and Bespoke portion of Table B on the IDR—Corporate Credit worksheet be split into two portions, an Index Tranches portion and a Bespoke portion, to avoid index tranches from being commingled with bespoke tranches containing different underlying names. The Federal Reserve will split the proposed portion into the two aforementioned portions.

**Wholesale Corporate Loan Schedule**

Several commenters noted the significant effort required to obtain the information for the proposed Special Purpose Entity Flag and recommended that the Federal Reserve delay implementation of the item. The Federal Reserve will delay implementation of the item until March 31, 2014.

**FR Y–14M**

**Domestic Home Equity Loan and Home Equity Line Schedule**

One commenter noted that there is an inconsistency between the Domestic First Lien Closed-end 1–4 Family Residential Mortgage (First Lien) schedule and the Domestic Home Equity Loan and Home Equity Line (Home Equity) schedule regarding the Troubled Debt Restructuring (TDR) item. Specifically, the TDR item on the First Lien schedule applies to all loans, whereas the TDR item on the Home Equity schedule applies to only loans that have been modified. The Federal Reserve will update the TDR item on the Home Equity schedule to apply to all loans.

**SUPPLEMENTARY INFORMATION:**

**Request for Comment on Information Collection Proposal**

*Abstract:* As mentioned above in the *Current Actions* section, the Federal Reserve has removed the requirement to submit or map to FICO scores in the schedules effective with data as of October 31, 2013. Beginning with the data as of October 31, 2013, for the FR Y–14M and December 31, 2013, for the FR Y–14Q, respondents would have the option to continue reporting credit score items as in prior submissions or to begin submitting other credit scores with sufficient supporting documentation describing the reported credit score. To collect additional information regarding the use of credit scores and to further refine a response to this comment that minimizes burden to respondents, the Federal Reserve is extending the comment period on credit score related items for an additional 60 days from publication of this **Federal Register** notice. The appropriate schedule changes related to credit score collection would be effective for the March 31, 2014, as of date.

For the extended comment period, the Federal Reserve is requesting comment and feedback regarding the following topics (1) the types of credit scores generally used by BHCs in the lines of business reported on the FR Y–14M and Retail FR Y–14Q schedules, (2) whether the industry generally uses internally-generated or externally-acquired credit scores, (3) issues to consider when validating the usefulness of a credit score (for example, Regulation Z considerations), (4) any industry standards with respect to credit scores, (5) mapping across industry-standard credit scores, (6) other ways credit scores can be made comparable across different scores, and (7) other composite measures, besides credit scores, that can be used to measure borrower credit worthiness.

All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, September 24, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2013–23694 Filed 9–27–13; 8:45 am]

**BILLING CODE 6210–01–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 25, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *MB Financial, Inc.,* Chicago, Illinois; to merge with Taylor Capital Group, Inc., Rosemont, Illinois, and thereby indirectly acquire Cole Taylor Bank, Chicago, Illinois.

Board of Governors of the Federal Reserve System, September 25, 2013.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2013–23705 Filed 9–27–13; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Meeting of the Community Preventive Services Task Force (Task Force)

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting; correction.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) published a document in the **Federal Register** of September 17, 2013, announcing the next meeting of the Community Preventive Services Task Force (Task Force). The document did not contain the registration information.

**Correction**

In the **Federal Register** of September 17, 2013, in FR Doc. 2013–22581, on page 57161, in the third column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

**FOR FURTHER INFORMATION AND TO RSVP CONTACT:** Andrea Baeder, The Community Guide Branch, Division of Epidemiology, Analysis, and Library Services (proposed), Center for Surveillance, Epidemiology and Laboratory Services (proposed), Office of Public Health Scientific Services (proposed), Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E–69, Atlanta, GA 30333, phone: (404) 498–498–6876, email: *CPSTF@cdc.gov*.

In the **Federal Register** of September 17, 2013, in FR Doc. 2013–22581, on page 57161, in the third column, and on page 57162, in the first column, correct the **SUPPLEMENTARY INFORMATION** caption to read:

**SUPPLEMENTARY INFORMATION:**

*Purpose:* The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue findings and recommendations to help inform decision making about policy, practice, and research in a wide range of U.S. settings.

*Matters to be discussed:* Cancer prevention and control, cardiovascular disease prevention and control, diabetes prevention and control, motor vehicle-related injury prevention, and promoting physical activity.

*Meeting Accessibility:* This meeting is open to the public, limited only by space availability. All meeting attendees must RSVP to ensure the required security procedures are completed to gain access to the CDC's Global Communications Center.

U.S. citizens must RSVP by 10/9/2013.

Non U.S. citizens must RSVP by 10/2/2013 due to additional security steps that must be completed.

Failure to RSVP by the dates identified could result in an inability to attend the Task Force meeting due to the strict security regulations on federal facilities.

**Roybal Campus Security Guidelines**

The Edward R. Roybal Campus is the headquarters of the U.S. Centers for Disease Control and Prevention and is located at 1600 Clifton Road, NE., Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

All meeting attendees must RSVP by the dates outlined under MEETING ACCESSIBILITY. In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Roybal Campus through the entrance on Clifton Road; the guard force will direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government issued photo identification (e.g., a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the meeting date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. All persons entering the building must pass through a metal detector. Visitors will be issued a visitor's ID badge at the entrance to Building 19 and will be escorted in groups of 5–10 persons to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: September 24, 2013.

**Tanja Popovic,**

*Deputy Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2013–23730 Filed 9–27–13; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Announcement of Requirements and Registration for Respirator Trusted-Source Mobile Application Challenge

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

*Award Approving Official:* Thomas R. Frieden, MD, MPH, Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH) located within the Department of Health and Human Services (HHS) is challenging teams of developers to design a mobile application (app) that will be used by the public to query the NIOSH trusted source site *http://knowits.niosh.gov* for specific criteria and display all relevant information on the Web page in an easy to view format on a mobile device. The NIOSH Trusted-Source Web page is the one-stop resource to get reliable respirator information. The goal is to create a mobile app that can run on multiple platforms, such as Apple iOS, Windows and Android, and that makes the Respirator Trusted-Source content selectable and easy-to-use, reaching users with portable technology.

**DATES:** The contest will be launched on September 30, 2013. Other important contest-related dates:

- Challenge Submission Period: September 30, 2013 through December 23, 2013
- Judging Process for Entries: December 23–January 6, 2014
- Winners Notified: Week of January 13, 2014

**FOR FURTHER INFORMATION CONTACT:** John Sporrer, phone (412)–386–6435 or email *jsporrer@cdc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Subject of Challenge Competition**

The 2009 H1N1 outbreak yielded a widespread acknowledgement of the need for respiratory protection as an essential line of defense for workers. Confusion among stakeholders and respirator users of important facts relative to respiratory protection was the main driver that led to the development of the NIOSH Respirator Trusted-Source Web page.

The NIOSH Respirator Trusted-Source Web page is the one stop resource to get reliable respirator information. The Web site is: *http://knowits.niosh.gov*. The Web site includes content to address three specific sections of information as follows: (1) Information on understanding the various types of respirators, how to identify approved models, and outlets for purchase; (2) Information on how to implement the use of respirators in the workplace and use them appropriately; (3) Ancillary respirator information, such as, commonly asked questions and answers, respirator myths, science of respirator function and performance, and respiratory protective devices not approved by NIOSH.

In this challenge, CDC/NIOSH is seeking an app that will be used by the public to query the NIOSH trusted source site *http://knowits.niosh.gov* for specific criteria and display all relevant information on the Web page in an easy to view format on a mobile device. The app should be capable of conducting searches of all information on the Web site and providing all the info relevant to the criteria selected for display. The purpose of this app is to query the site for specific criteria and display it in an easy to view format.

In addition to providing the app or a link to the app, contestants should:

(1) Upload a brief slide presentation that describes your entry. Slide decks should be in .PDF format, and contain a maximum of 10 slides. We strongly recommend you explain how you addressed the evaluation criteria and the key features of the product as they relate to the challenge.

(a) Narrative: One of the slides in the presentation should be a narrative explaining how the app is intended to work.

(2) Provide a link to a 4-minute demo video showing your application in action. Post videos to video-sharing sites like YouTube.

(3) Mobile application must be Section 508-compliant. For information on Section 508-compliance, and tools for implementation, visit: *www.section508.gov*.

(4) App must be accessible on a mobile hand-held device.

(5) Neither the CDC name nor CDC logo will be used in the app or the icon for the app.

(6) The first place prize winner will provide paths to download the app from app stores as a free app.

(7) The first place prize winner will provide technical support for 1 year after the award at no cost to HHS/CDC/NIOSH. The scope of the technical support is to fix any malfunctions that may come up during the app being used by stakeholders.

(8) All videos and presentations must be submitted in English.

(9) Videos should not include endorsements of private products, services, or enterprises.

(10) Videos containing profane language, violence, weapons, sexually explicit content, or personal attacks on people or organizations will not be considered and will be disqualified.

**Eligibility Rules for Participating in the Competition**

To be eligible to win a prize under this challenge, an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HHS/CDC;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee or contractor of NIOSH, judges of the challenge, or any other party involved with the design, production, execution, or distribution of the challenge or their immediate family (spouse, parents or step-parents, siblings and step-siblings, and children and step-children).

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this competition, contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage or loss of property, revenue or profits, whether direct, indirect, or consequential, arising from participation in this contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this competition, contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to contest activities.

Contestants must obtain liability insurance or demonstrate financial responsibility in the amount of $0.00 for claims by: (1) A third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered contestant's insurance policy and registered contestants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and (2) the Federal Government for damage or loss to Government property resulting from such an activity. Contestants participating within a group must obtain insurance or demonstrate financial responsibility for all members of the group.

**Registration Process for Participants**

Interested persons should read the official rules posted on *https://www.challenge.gov*. Contestants must submit their content through the *https://www.challenge.gov* Web site. All submissions will be reviewed by HHS/CDC to confirm eligibility. Registration is free and can be completed anytime during the submission period, September 30, 2013 through December 23, 2013.

**Amount of the Prize**

There will be one $8,000 first place prize and two $1,000 honorable mention prizes, for a total of $10,000.

**Payment of the Prize**

Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. HHS will comply

with the Internal Revenue Service withholding and reporting requirements, where applicable.

**Basis Upon Which Winner Will Be Selected**

A panel of judges will evaluate each submission on the following four criteria:

User Interface—30%

- Were the user instructions easy to follow and comprehend?
- Is the display and color scheme of the information appealing?

Ease of Use—20%

- Are you able to search for information easily?
- Is the requested information, both text and graphics, easy to read when displayed?

Innovation in Design—20%

- Is the application original?
- Is the application creative?
- Is the design engaging (i.e. pleasant and satisfying to use)?

Functionality and Accuracy—30%

- Application has been tested on intended platforms?
- Can the application be accessed by the end user?
- Does the application return the correct information?

**Additional Information**

Participation in this contest constitutes a contestants' full and unconditional agreement to abide by the contest's official rules found at *https://www.challenge.gov*.

If contestants choose to provide HHS/CDC with personal information by registering or filling out the submission form through the Challenge.gov Web site, that information is used to respond to contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the contest. Information is not collected for commercial marketing. Winners are permitted to cite that they won this contest.

Contestant(s) warrants that he or she is the sole author and owner of the contest submission, and that the contest submission completely originates with the contestant, that it does not infringe upon any copyright or any other rights of any third party of which contestant(s) is aware, and is free of malware. The contestant cannot submit material that he or she did not create and is not the owner of; the contestant cannot take material from any other source.

All materials submitted to the Respirator Trusted-Source Mobile App challenge remain the intellectual property of the individuals who developed them. However, HHS, CDC, and NIOSH maintain a non-exclusive, royalty-free license to use, reproduce, publish, distribute and exhibit the submission/winning challenge in any and all formats or manner for educational, training and other public health purposes consistent with HHS, CDC and/or NIOSH's mission. The contestant will be acknowledged in any NIOSH actions conducted under this license.

HHS/CDC reserves the right to cancel, suspend, and/or modify the contest, or any part of it, for any reason, at HHS/CDC's sole discretion.

**Authority:** 15 U.S.C. 3719.

Dated: September 24, 2013.

**Tanja Popovic,**

*Deputy Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2013–23731 Filed 9–27–13; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

**DATES:** Comments on this ICR should be received within 30 days of this notice.

**ADDRESSES:** Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

**SUPPLEMENTARY INFORMATION:**

*Information Collection Request Title:* National Hospital Organ Donation Campaign's Activity Scorecard

*OMB No.:* 0915–xxxx—NEW

*Need and Proposed Use of the Information:* HRSA's Healthcare Systems Bureau, Division of Transplantation, administers the Workplace Partnership for Life program under the authority of Section 377A(a) of the Public Health Service (PHS) Act, (42 U.S.C. 274f–1). The Workplace Partnership for Life program seeks to increase the number of registered organ, eye, and tissue donors and to increase awareness about organ donation. HRSA launched a challenge to hospitals nationwide to assist in this effort by conducting donor education and donor registry enrollment events in their hospitals and communities. The nation's 58 organ procurement organizations (OPOs), who already work with hospitals on clinical aspects of transplantation, are invited to participate in HRSA's National Hospital Organ Donation Campaign to increase the number of enrollments in state donor registries. The Campaign supports OPOs by providing communications materials, facilitating the sharing of best practices, leveraging the influence of national associations and organizations related to hospitals and organ donation, and offering the additional incentive of national-level recognition to hospitals.

The National Hospital Organ Donation Campaign's Activity Scorecard is one piece of this campaign. A campaign leadership committee comprised of representatives from OPOs, Donate Life America (DLA) affiliates, and hospitals helped conceptualize the Activity Scorecard, which is based on the committee's experience of hospital receptivity to competition and the opportunity to be recognized among their peers. The Activity Scorecard provides hospitals, which wish to participate in the campaign, with ideas for outreach activities. Each activity on the programmable PDF is assigned a particular number of points based on the activity's potential for generating registrations.

Hospitals can complete the Activity Scorecard and submit it via email or fax to HRSA or to their OPO or DLA. This is a voluntary activity. Hospitals may participate in the campaign without using the Activity Scorecard. HRSA anticipates that most hospitals enrolled in the campaign (currently 802) will submit a completed Activity Scorecard once a year.

Most important, the Activity Scorecard provides incentive for hospitals to conduct activities that will increase the number of registered donors throughout the nation. A list of hospitals that reach these levels will be shared with all campaign participants during monthly webinars, in monthly campaign e-newsletters from HRSA, and in communications pieces sent out by the campaign's ten national partners, which include the American Hospital Association, the Association of Organ Procurement Organizations, and the American Society of Transplant Surgeons. In addition, OPOs, DLA affiliates, participating state hospital associations, HRSA, and the national partners can use the results to recognize hospital participation and successes. The ''write-in'' option that allows hospitals to list additional activities will help to identify best practices that can be shared with all hospital partners on monthly webinars.

*Likely Respondents:* A hospital representative, most often the organ donation champion identified by the OPO, can download the form from organdonor.gov or receive it from their OPO or Donate Life America (DLA) affiliate.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| National Hospital Organ Donation Campaign's Activity Scorecard | 1000 | 1 | 1000 | 0.36 | 360 |

Dated: September 20, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–23772 Filed 9–27–13; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received within 60 days of this notice.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

*Information Collection Request Title:* The Stem Cell Therapeutic Outcomes Database OMB No. 0915–0310—Revision

*Abstract:* The Stem Cell Therapeutic and Research Act of 2005, Public Law (Pub. L.) 109–129, as amended by the Stem Cell Therapeutic and Research Reauthorization Act of 2010, Public Law 111–264 (the Act), provides for the collection and maintenance of human blood stem cells for the treatment of patients and research. HRSA's Healthcare Systems Bureau has established the Stem Cell Therapeutic Outcomes Database. Operation of this database necessitates certain record keeping and reporting requirements in order to perform the functions related to hematopoietic stem cell transplantation under contract to the U.S. Department of Health and Human Services (HHS). The Act requires the Secretary to contract for the establishment and maintenance of information related to patients who have received stem cell therapeutic products and to do so using a standardized, electronic format. Data is collected from transplant centers by the Center for International Blood and Marrow Transplant Research and is used for ongoing analysis of transplant outcomes. HRSA uses the information in order to carry out its statutory responsibilities. Information is needed to monitor the clinical status of transplantation and to provide the Secretary of HHS with an annual report of transplant center-specific survival data. The increase in burden is due to an increase in the annual number of transplants and increasing survivorship after transplantation.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the

information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form Nnme | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Baseline Pre-TED (Transplant Essential Data) | 200 | 38 | 7,600 | 1 | 7,600 |
| Product Form (includes Infusion, HLA, and Infectious Disease Marker inserts) | 200 | 29 | 5,800 | 1 | 5,800 |
| 100-Day Post-TED | 200 | 38 | 7,600 | 0.85 | 6,460 |
| 6-Month Post-TED | 200 | 31 | 6,200 | 1 | 6,200 |
| 12-Month Post-TED | 200 | 27 | 5,400 | 1 | 5,400 |
| Annual Post-TED | 200 | 104 | 20,800 | 1 | 20,800 |
| Total | 200 | | 53,400 | | 52,260 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: September 20, 2013.

**Bahar Niakan,**

*Director, Division of Policy and Information Coordination.*

[FR Doc. 2013–23774 Filed 9–27–13; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-Day Comment Request; Interactive Informed Consent for Pediatric Clinical Trials

**SUMMARY:** 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 National Institute Heart, Lung, and Blood Institute (NHBLI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. The 60-day FRN was published 05/9/2013 (Vol. 78, No. 90, page 27243). No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Dental and Craniofacial Research (NIDCR), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Victoria Pemberton, Clinical Trials Specialist, NHLBI, 6701 Rockledge Drive, Room 8102, MSC 7940, Bethesda, MD 20892 or call non-toll-free number (301) 435–0510 or Email your request, including your address to: *pembertonv@nhlbi.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* Interactive Informed Consent for Pediatric Clinical Trials, 0925–New, National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

*Need and Use of Information Collection:* This study will compare parents' and children's understanding of information about a hypothetical clinical trial presented using either a standard paper consent document or an interactive computer-based consent program. Parents' and children's understanding, regardless of whether they received the standard consent or the interactive computer-based program, will be assessed by face-to-face interview. In addition, parents' and children's perceptions of, and satisfaction with, the information presented will be evaluated by completion of a short questionnaire. The primary hypothesis to be tested is that interactive computer-based research consent information is better understood and accepted by parents and children compared with the standard paper consent document. Given that many individuals have difficulty reading and interpreting standard written consent documents, this technology holds promise as a means to optimize the consent and assent process particularly among individuals with low literacy and numeracy skills.

OMB approval is requested for 18 months. There are no costs to respondents other than their time. The total estimated annualized burden hours are 190.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Number of respondents | Number of responses per response | Average burden per response (in hour) | Total annual burden hours |
|---|---|---|---|---|
| Parents | 148 | 1 | 43/60 | 106 |
| Children | 136 | 1 | 37/60 | 84 |

Dated: September 23, 2013.

**Lynn Susulske,**

*NHLBI Project Clearance Liaison, National Institutes of Health.*

**Michael S. Lauer,**

*Director, DCVS, National Institutes of Health.*

[FR Doc. 2013–23755 Filed 9–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; 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 of Mental Health Special Emphasis Panel; P30 Centers Program for Research on HIV/AIDS & Mental Health.

*Date:* October 25, 2013.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Dimensional Approaches to Research Classification in Psychiatric Disorders (RDoC).

*Date:* October 29, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott, 1221 22nd Street NW, Washington, DC 20037.

*Contact Person:* Rebecca C Steiner, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; BSNIP–2.

*Date:* October 29, 2013.

*Time:* 11:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Intervention Conflicts Panel Review.

*Date:* October 29, 2013.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; NIH Pathway to Independence Award (K99).

*Date:* November 1, 2013.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Megan Kinnane, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 24, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–23638 Filed 9–27–13; 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 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 Environmental Health Sciences Special Emphasis Panel; Programs in Superfund and Related Sites.

*Date:* October 23–25, 2013.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Chapel Hill Hotel, One Europa Drive, Chapel Hill, NC 27517.

*Contact Person:* Linda K Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov.*

(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 24, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–23639 Filed 9–27–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Building Interdisciplinary Research Team Review Meeting.

*Date:* October 22, 2013.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Arthritis and Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892.

*Contact Person:* Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov.*

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Clinical Study and Trial Applications.

*Date:* October 23, 2013.

*Time:* 4:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Arthritis and Musculoskeletal and Skin Diseases, NIH, One Democracy Plaza, 6701 Democracy Boulevard, Suite 814, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Helen Lin, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 24, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–23640 Filed 9–27–13; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Small Grants to Promote Diversity.

*Date:* October 22, 2013.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary R01 Telephone Review.

*Date:* October 30, 2013.

*Time:* 10:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Mechanisms of Upper Gut and Airway Interaction-Program Project Grant.

*Date:* November 6, 2013.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary R01 Telephone Review.

*Date:* November 7, 2013.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: *September 23, 2013.*

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–23641 Filed 9–27–13; 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 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 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:* Neurological Sciences Training Initial Review Group; NST–2 Subcommittee.

*Date:* October 28–29, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Fairmont Washington, DC., 2401 M Street NW., Washington, DC 20037.

*Contact Person:* JoAnn McConnell, 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, 301–496–5324, *mcconnej@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 24, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–23637 Filed 9–27–13; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified laboratories and IITF is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 7–1051, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant Laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITF in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

**Instrumented Initial Testing Facilities (IITF)**

None

**Laboratories**

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

≤Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN, 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Fortes Laboratories, Inc., 25749 SW Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive,

Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories).

Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 707–570–4434.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory has voluntarily withdrawn from the NLCP, effective date September 1, 2013:

Quest Diagnostics Clinical Laboratories d/b/a Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150, (Formerly: Advanced Toxicology Network).

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Janine Denis Cook,**

*Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.*

[FR Doc. 2013–23746 Filed 9–27–13; 8:45 am]

BILLING CODE 4160–20–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of July 16, 2013.

**DATES:** *Effective Dates:* The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on July 16, 2013. The next triennial inspection date will be scheduled for July 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 4350 Oakes Rd., Suite 521 A, Davie, FL 33314, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/*

*labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf*

Dated: September 16, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–23736 Filed 9–27–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of May 23, 2013.

**DATES:** *Effective Dates:* The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on May 23, 2013. The next triennial inspection date will be scheduled for May 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 5237 Halls Mill Road, Building F, Mobile, AL 36619, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 16, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–23744 Filed 9–27–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of March 6, 2013.

**DATES:** *Effective Dates:* The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on March 6, 2013. The next triennial inspection date will be scheduled for March 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 33 Rigby Road, South Portland, ME 04106, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 16, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–23742 Filed 9–27–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of Inspectorate America Corporation, as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Inspectorate America Corporation, as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of March 7, 2013.

**DATES:** *Effective Dates:* The approval of Inspectorate America Corporation, as commercial gauger became effective on March 7, 2013. The next triennial inspection date will be scheduled for March 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Inspectorate America Corporation,

178 Mortland Road, Searsport, ME 04974, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: September 16, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–23745 Filed 9–27–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of February 21, 2013.

**DATES:** *Effective Dates:* The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on February 21, 2013. The next triennial inspection date will be scheduled for February 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 2 Williams Street, Chelsea, MA 02150, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf*

Dated: September 16, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2013–23740 Filed 9–27–13; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5724–N–02]**

### Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Housing Choice Voucher and Moderate Rehabilitation Programs; Notice of Availability on HUD's Web site

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability on HUD's Web site of the annual factors for determining the on-going administrative fee for housing agencies administering the rental voucher and moderate rehabilitation programs, including Single Room Occupancy during Calendar Year (CY) 2013.

**DATES:** Effective January 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Miguel Fontanez, Director, Housing Voucher Financial Management Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4222, 451 Seventh Street SW., Washington, DC 20410–8000, telephone number 202–402–2934. (This is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service during business hours at 1–800–877–8337.

**SUPPLEMENTARY INFORMATION:** The annual factors for determining public housing agency administrative fees for the Section 8 Housing Choice Voucher and Moderate Rehabilitation Programs can be found on HUD's Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv.*

The notice posted on HUD's Web site provides the methodology that HUD used to determine the CY 2013 administrative fees rates by area, which the Office of Housing Voucher Programs (OHVP) will utilize to compensate public housing authorities (PHAs) for administering the Housing Choice Voucher (HCV) programs. PIH Notice 2013–12, Implementation of the Federal Fiscal Year (FY) 2013 Funding Provision for the Housing Choice Voucher Program, issued on May 23, 2013, describes the settlement process for this compensation, which will be a result of the mandate enacted in the ''Consolidated and Further Continuing Appropriations Act, 2013'' (Pub. L. 113–6), referred to hereinafter as ''the Appropriations Act'', signed on March 27, 2013. PIH Notice 2013–12 can be found at *http://portal.hud.gov/hudportal/documents/huddoc?id=13–12pihn.pdf.*

Dated: September 24, 2013.

**Sandra B. Henriquez**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 2013–23748 Filed 9–27–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Wildland Fire Executive Council Meeting Schedule

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the requirements of the Federal Advisory

Committee Act, 5 U.S.C. App., 2, the U.S. Department of the Interior, Office of the Secretary, Wildland Fire Executive Council (WFEC) will meet as indicated below.

**DATES:** The next meeting will be held October 25, 2013.

**ADDRESSES:** The meetings will be held from 10:00 a.m. to 2:00 p.m. on October 25, 2013 at the Main Interior Building, 1849 C Street NW., Room 2654, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Shari Eckhoff, Designated Federal Officer, 300 E Mallard Drive, Suite 170, Boise, Idaho 83706; telephone (208) 334–1552; fax (208) 334–1549; or email *Shari_Eckhoff@ios.doi.gov.*

**SUPPLEMENTARY INFORMATION:** The WFEC is established as a discretionary advisory committee under the authorities of the Secretary of the Interior and Secretary of Agriculture, in furtherance of 43 U.S.C. 1457 and provisions of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et. seq*), the National Wildlife Refuge System improvement Act of 1997 (16 U.S.C. 668dd-668ee), and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et.seq*) and in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The Secretary of the Interior and Secretary of Agriculture certify that the formation of the WFEC is necessary and is in the public interest.

The purpose of the WFEC is to provide advice on coordinated national-level wildland fire policy and to provide leadership, direction, and program oversight in support of the Wildland Fire Leadership Council. Questions related to the WFEC should be directed to Shari Eckhoff (Designated Federal Officer) at *Shari_Eckhoff@ios.doi.gov* or (208) 334–1552 or 300 E. Mallard Drive, Suite 170, Boise, Idaho, 83706–6648.

*Meeting agenda:* The meeting agenda will include: (1) Welcome and introduction of council members; (2) Final approval of the Cohesive Strategy National Report; (3) Public comments; (4) Develop recommendations to go forward to the Secretary of the Interior and Secretary of Agriculture through the Wildland Fire Leadership Council; and (5) Closing remarks. Participation is open to the public.

*Public input:* All WFEC meetings are open to the public. Members of the public who wish to participate must notify Shari Eckhoff at *Shari_Eckhoff@ios.doi.gov* no later than the Friday preceding the meeting. Those who are not committee members and wish to present oral statements or obtain information should contact Shari Eckhoff via email no later than the Friday preceding the meeting. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Questions about the agenda or written comments may be emailed or submitted by U.S. Mail to: Department of the Interior, Office of the Secretary, Office of Wildland Fire, Attention: Shari Eckhoff, 300 E. Mallard Drive, Suite 170, Boise, Idaho 83706–6648. WFEC requests that written comments be received by the Friday preceding the scheduled meeting. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Eckhoff at (202) 527–0133 at least seven calendar days prior to the meeting.

Dated: September 24, 2013.

**Shari Eckhoff,**

*Designated Federal Officer.*

[FR Doc. 2013–23765 Filed 9–27–13; 8:45 am]

**BILLING CODE 4310–J4–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2013–N228; FXIA16710900000–134–FF09A30000]**

### Advisory Council on Wildlife Trafficking

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

**ACTION:** Notice of meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Advisory Council on Wildlife Trafficking (Council).

**DATES:** The meeting will be held on Monday, October 21, 2013, from 11 a.m. to 5 p.m. (Eastern Time). Members of the public who want to participate in the meeting must notify Mr. Cade London by close of business on Monday, October 14, 2013. See additional instructions under **SUPPLEMENTARY INFORMATION**, Procedures for Public Input.

**ADDRESSES:** The meeting will be held at the U.S. Department of the Interior, South Interior Building Auditorium, 1951 Constitution Avenue NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Cade London, Special Assistant—USFWS International Affairs, by U.S. mail at 4401 North Fairfax Drive, Room 110, Arlington, VA 22203; by telephone at (703) 358–2584; by fax at (703) 358–2276; or by email at *cade_london@fws.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.), we announce that the Advisory Council on Wildlife Trafficking (Council) will hold a meeting to discuss Committee Structure and Organization, the National Strategy to Combat Wildlife Trafficking, and other Council business as appropriate.

#### Background

Pursuant to E.O. 13648, the Advisory Council on Wildlife Trafficking was formed on August 30, 2013, to advise the Presidential Task Force on Wildlife Trafficking, through the Secretary of the Interior, on national strategies to combat wildlife trafficking, including, but not limited to (a) Effective support for anti-poaching activities; (b) Coordinating regional law enforcement efforts; (c) Developing and supporting effective legal enforcement mechanisms; and (d) Developing strategies to reduce illicit trade and consumer demand for illegally traded wildlife, including protected species.

The eight-member Council, appointed by the Secretary of the Interior, includes former senior leadership within the U.S. Government, as well as chief executive officers and board members from conservation organizations and the private sector. For more information on the Council and its members, visit *http://www.fws.gov/international/advisory-council-wildlife-trafficking/.*

#### Meeting Agenda

The Council will consider:

1. Advisory Council organization and process,
2. The National Strategy to Combat Wildlife Trafficking, and
3. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/.*

#### Procedures for Public Input

Interested members of the public may submit relevant information for the Council to consider during the public meeting. Members of the public may register in advance to speak (by October 14, 2013), or they may submit written questions in advance for the Council to address during the meeting (by October 16, 2013). Nonregistered public speakers will not be considered during the meeting.

Individuals or groups who want to make an oral presentation at the meeting

will be limited to 3 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Cade London, Special Assistant—International Affairs (preferably via email) by Monday, October 14, 2013, to be placed on the public speaker list (see **FOR FURTHER INFORMATION CONTACT**).

Registered speakers who wish to expand on their oral statements, or those who wanted to speak but could not be accommodated on the agenda, are invited to submit subsequent written statements to the Council after the meeting. Such written statements must be received by Mr. London, in writing (preferably via email) no later than October 28, 2013.

In order to attend this meeting, you must register by close of business Monday, October 14, 2013. Because entry to Federal buildings is restricted, all visitors must preregister to be admitted. Please submit your name, time of arrival, email address, and phone number to Cade London (see **FOR FURTHER INFORMATION CONTACT**).

Summary minutes of the conference will be maintained at 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203, and on the Council Web site at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/,* and will be available for public inspection during regular business hours within 30 days following the meeting.

Dated: September 25, 2013.

**Rowan W. Gould,**

*Acting Director.*

[FR Doc. 2013–23937 Filed 9–27–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2013–N225; FXIA16710900000P5–123–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 30, 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 for 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: DDR Rock Ranch LLC, Floresville, TX; PRT–08353B

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: Hill Country Trophy Hunting, Mountain Home, TX; PRT–08670B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess for scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*) 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: Blackbrush Ridge Ranch, Brackettville, TX; PRT–15315B

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.

Appplicant: Blackbrush Ridge Ranch, Brackettville, TX; PRT–15322B

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: David Reisman, Howard Beach, NY; PRT–16461B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata)* to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Judy May, Water Valley, TX; PRT–16838B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Judy May, Water Valley, TX; PRT–16848B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) 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: Michael Birdsall, Port St. Lucie, FL; PRT–16914B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Ruth Ranch LLC, Knippa, TX; PRT–16806B

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.

Appplicant: Ruth Ranch LLC, Knippa, TX; PRT–16805B

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: Christopher Leone, Howell, NJ; PRT–233243

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–17017B

The applicant requests a permit to export one male captive-bred giant panda (*Ailuropoda melanoleuca*) born at the zoo in 2009, which is owned by the Government of China, to the Wolong Nature Reserve Giant Panda Bifengxia Base. This export is under the terms of San Diego's loan agreement with the China Wildlife Conservation Association, and the State Forestry Administration. The export is part of the approved loan program for the purpose of enhancement of the survival of the species through scientific research as outlined in San Diego's original permit.

Applicant: Friedel Ranches, Copperas Cove, TX; PRT–69093A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include ring-tailed lemur (*Lemur catta*), black and white ruffed lemur (*Varecia variegata*), red ruffed lemur (*Varecia rubra*), black lemur (*Eulemur macaco*), and brown lemur (*Eulemur fulvus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Christopher Lee, Rochester Hills, MI; PRT–16925B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*), spotted pond turtle (*Geoclemys hamiltonii*), and African dwarf crocodile (*Osteolaemus tetraspis*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Donald Robillard, Plano, TX; PRT–13373B

The applicant requests a permit to import a 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

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2013–23693 Filed 9–27–13; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAK930000.L13100000.EI0000.241A]**

### Notice of National Petroleum Reserve-Alaska Oil and Gas Lease Sale 2013 and Notice of Availability of the Detailed Statement of Sale for Oil and Gas Lease Sale 2013 in the National Petroleum Reserve-Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management's (BLM) Alaska State Office hereby notifies the public that it will hold a National Petroleum Reserve-Alaska oil and gas lease sale bid opening for tracts in the National Petroleum Reserve-Alaska. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid.

**DATES:** The oil and gas lease sale bid opening will be held at 1 p.m. on Wednesday, Nov. 6, 2013. Sealed bids must be received by 4 p.m., Monday, Nov. 4, 2013.

**ADDRESSES:** The oil and gas lease sale bids will be opened at the Anchorage Federal Building, Denali Room (fourth floor), 222 W. 7th Ave., Anchorage, AK. Sealed bids must be sent to Carol Taylor

(AK932), BLM-Alaska State Office; 222 West 7th Avenue, #13; Anchorage, AK 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** Wayne Svejnoha, 907–271–4407. 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:** All bids must be submitted by sealed bid in accordance with the provisions identified in the Detailed Statement of Sale. They must be received at the BLM-Alaska State Office, ATTN: Carol Taylor (AK932); 222 West 7th Avenue, #13; Anchorage, AK 99513–7504; no later than 4 p.m., Monday, Nov. 4, 2013. The Detailed Statement of Sale for the National Petroleum Reserve-Alaska Oil and Gas Lease Sale 2013 will be available to the public immediately after publication of this Notice in the **Federal Register**. The Detailed Statement may be obtained from the BLM-Alaska Web site at www.blm.gov/ak, or by request from the Public Information Center, BLM-Alaska State Office; 222 West 7th Ave., #13; Anchorage, AK 99513–7504; telephone 907–271–5960. The Detailed Statement of Sale will include a description of the areas to be offered for lease, the lease terms, conditions, special stipulations, required operating procedures, and how and where to submit bids.

**Authority:** 43 CFR 3131.4–1 and 43 U.S.C. 1733 and 1740.

**Bud C. Cribley,**

*State Director .*

[FR Doc. 2013–23776 Filed 9–27–13; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13893; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Tumacacori National Historical Park, Tumacacori, AZ; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The U.S. Department of the Interior, National Park Service, Tumacacori National Historical Park has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on July 7, 2009. This notice corrects the number of associated funerary objects. Transfer of control of the items in this correction notice has occurred.

**ADDRESSES:** Bob Love, Superintendent, Tumacacori National Historical Park, P.O. Box 8067, Tumacacori, AZ 85640, telephone (520) 398–2341 Ext. 52, email *bob_love@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of Tumacacori National Historical Park, Tumacacori, AZ. The human remains and associated funerary objects were removed from areas near Tumacacori Mission, Santa Cruz County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Tumacacori National Historical Park.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (74, FR 32184–32185, July 7, 2009). After publication, one additional associated funerary object was found. Transfer of control of the items in this correction notice has occurred.

*Correction*

In the **Federal Register** (74, FR 32184–32185, July 7, 2009), the following paragraph is inserted after paragraph six:

> In the 1930s, one cremation jar was removed from an unknown location near Tumacacori in Santa Cruz County, AZ by custodian George Boundey. It is believed that this jar was associated with the individuals removed in 1934 and 1935 described above.

In the **Federal Register** (74, FR 32184–32185, July 7, 2009), paragraph 13, sentence 2 is corrected by substituting the following sentence:

> Officials of Tumacacori National Historical Park also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 84 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

### Additional Requestors and Disposition

Transfer of control of the human remains and associated funerary objects occurred after the 30 day waiting period expired for the original July 7, 2009 Notice of Inventory Completion. For questions related to this notice, contact Bob Love, Superintendent, Tumacacori National Historical Park, P.O. Box 8067, Tumacacori, AZ 85640, telephone (520) 398–2341 Ext. 52, email *bob_love@nps.gov.*

Tumacacori National Historical Park is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pascua Yaqui Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 21, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23797 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13882; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Coconino National Forest, Flagstaff, AZ, and Sharlot Hall Museum, Prescott, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (USDA), Forest Service, Coconino National Forest, and the Sharlot Hall Museum have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice

that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the USDA Forest Service, Southwestern Region. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the USDA Forest Service, Southwestern Region, at the address in this notice by October 30, 2013.

**ADDRESSES:** Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd. SE., Albuquerque, NM 87102, telephone (505) 842–3238, email *fwozniak@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the USDA Forest Service, Southwestern Region. The human remains and associated funerary objects were removed from Coconino County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains and associated funerary objects was made by the USDA Forest Service, Coconino National Forest, and the Sharlot Hall Museum professional staffs in consultation with representatives of the Hopi Tribe of Arizona.

### History and Description of the Remains

In 1941, cremated human remains representing, at minimum, two individuals were removed from one of the sites in the Winona Village Complex (NA 2131, NA2133, NA 2134, NA 3644) in Coconino County, AZ, during legally authorized excavations conducted by Dr. John C. McGregor of the Museum of Northern Arizona. The cremated remains of two infants were found in two ceramic bowls. The cremated remains and the bowls were subsequently donated to the Sharlot Hall Museum, Prescott, AZ. No known individuals were identified. The two associated funerary objects are two ceramic vessels.

The Winona Village Complex is a group of pre-historic pithouse villages located in the vicinity of the present day community of Winona, AZ. The characteristics of material culture at these sites indicate that this group of pithouse villages is associated with the archeologically defined Northern Sinagua culture of north central Arizona. The material culture, architecture, and site organization indicates that the location was occupied between A.D. 1066 and 1150. The Northern Sinagua culture is considered to be ancestral to the Hopi Tribe of Arizona. Oral traditions presented by representatives of the Hopi Tribe support this cultural affiliation.

### Determinations Made by the USDA Forest Service, Southwestern Region

Officials of USDA Forest Service, Southwestern Region, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona.

### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd. SE., Albuquerque, NM 87102, telephone (505) 842–3238, email *fwozniak@fs.fed.us,* by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Hopi Tribe of Arizona may proceed.

The USDA Forest Service, Southwestern Region, is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: August 20, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23811 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–13951; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Michigan State Police, Mount Pleasant Post, Mount Pleasant, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Michigan State Police, Mount Pleasant Post, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of the human remains should submit a written request to the Michigan State Police, Mount Pleasant Post. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Michigan State Police, Mount Pleasant Post, at the address in this notice by October 30, 2013.

**ADDRESSES:** Detective Sergeant Gary Green; Michigan State Police, Mount Pleasant Post, 3580 S. Isabella Road, Mount Pleasant, MI 48858; telephone (989) 773–5951; email *GreenG1@Michigan.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory

of human remains under the control of the Michigan State Police; Mount Pleasant, MI. The human remains were removed from Montcalm County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Michigan State Police professional staff in consultation with representatives of the Saginaw Chippewa Indian Tribe of Michigan.

**History and Description of the Remains**

On April 4, 1999, human remains representing, at minimum, one individual were removed from the northwest corner of Section 14, near Kohler Road and M–46 Highway, in Montcalm County, MI. The remains were located during an excavation at a located on private property. The remains were buried approximately four feet under the surface of the ground. No known individuals were identified. No associated funerary objects are present.

The Michigan State University Anthropology Lab determined that the remains are those of a ''Pre-modern Native American'' male between the age of 30 and 50 years old. The location the remains were found is near the current location of the Saginaw Chippewa Indian Tribe of Michigan. Based on geographic location and consultation, the remains are most likely the remains of a member of that tribe.

**Determinations Made by the Michigan State Police, Mount Pleasant Post**

Officials of the Michigan State Police, Mount Pleasant Post have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and Saginaw Chippewa Indian Tribe of Michigan.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Detective Sergeant Gary Green; Michigan State Police, Mount Pleasant Post, 3580 S. Isabella Road, Mount Pleasant, MI 48858; telephone (989) 773–5951; email *GreenG1@Michigan.gov,* by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Saginaw Chippewa Indian Tribe of Michigan may proceed.

The Michigan State Police is responsible for notifying the Saginaw Chippewa Indian Tribe of Michigan that this notice has been published.

Dated: August 28, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23814 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13881; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), has corrected an inventory of human remains published in a Notice of Inventory Completion in the **Federal Register** on July 30, 2013. This notice removes one paragraph for human remains incorrectly identified as being removed from Careless Bay, WA.

**ADDRESSES:** Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Burke Museum.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice removes a paragraph from a Notice of Inventory Completion published in the **Federal Register** (78 FR 45958–45959, July 30, 2013). The location from which the human remains were removed was incorrectly identified as Careless Bay, WA. These human remains will be the subject of a subsequent notice, correcting the location and the cultural affiliation of these human remains. Transfer of control of the items in this correction notice has not occurred.

*Correction*

In the **Federal Register** (78 FR 45958–45960, July 30, 2013), paragraph 12 is removed in its entirety.

In the **Federal Register** (78 FR 45958–45960, July 30, 2013), paragraph 19, is corrected by substituting the following sentence:

> Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.

The Burke Museum is responsible for notifying the Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) that this notice has been published.

Dated: August 20, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23813 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13940; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains

and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Burke Museum. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Burke Museum at the address in this notice by October 30, 2013.

**ADDRESSES:** Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email plape@uw.edu.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Burke Museum, Seattle, WA. The human remains were removed from Nome, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

## Consultation

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the King Island Native Community, Native Village of Council, and the Nome Eskimo Community. The Burke Museum also consulted with the following Native Alaska Corporations: Bering Straits Native Corporation, Council Native Corporation, King Island Native Corporation, and the Sitnasauk Native Corporation. All of the tribes and corporations listed in this section are hereafter referred to as ''The Consulted Tribes and Corporations.''

## History and Description of the Remains

At an unknown date, most likely between 1914 and 1922, human remains representing, at minimum, one individual were removed from Nome Beach, AK, by C.J. Albrecht. The human remains were found in collections at the Burke Museum in 1973 (Burke Accn. #1973–58). No known individuals were identified. No associated funerary objects are present.

The human remains have been determined to be Native American based on anthropological evidence. The present-day Nome Eskimo Community is related to the aboriginal Native Inupiat archeological village sites documented in the Nome area. These archaeological sites date between 1000 and 1700 A.D., and confirm that these Native populations have continuously occupied the area since that time.

## Determinations Made by the Burke Museum

Officials of the Burke Museum have determined that:

- Based on archaeological evidence, the human remains have been determined to be Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Nome Eskimo Community.

## Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu,* by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Nome Eskimo Community may proceed.

The Burke Museum is responsible for notifying The Consulted Tribes and Corporations that this notice has been published.

Dated: August 27, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23817 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

# DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–13772; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA, and Central Washington University, Ellensburg, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), and Central Washington University have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Burke Museum or Central Washington University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Burke Museum or Central Washington University at the address in this notice by October 30, 2013

**ADDRESSES:** Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu,* and Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *deleonl@cwu.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.

3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Burke Museum and Central Washington University. The human remains were removed from Skagit County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains and associated funerary objects was made by the Burke Museum and Central Washington University professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe (hereafter referred to as ''The Consulted Tribes'').

**History and Description of the Remains**

In 1937, human remains representing, at minimum, two individuals were removed from the Handel Farm in Skagit County, WA. The human remains were removed by Lt. Roger Ernesti, Arie Handel, and H. Thomas Cain and donated to the Burke Museum in 1937 (Burke Accn. #2983, 2984). In 1974, the Burke Museum staff legally transferred human remains from this site to Central Washington University (CWU BK). No known individuals were identified. No associated funerary objects are present.

Between 1958 and 1963, human remains representing, at minimum, nine individuals were removed from the Tronsdal Site (45–SK–37) in Skagit County, WA. The human remains were removed by University of Washington Field School Expeditions led by Dr. Robert E. Greengo. The human remains were transferred to the Burke Museum in 1965 (Burke Accn. #1965–72) and the remaining archeological collection and associated funerary objects were subsequently transferred in 1983 (Burke Accn. #1983–10). In 1974, the Burke Museum staff legally transferred human remains from this site to Central Washington University (CWU BJ). No known individuals were identified. The eight associated funerary objects include one lot of red ochre, one antler tine, one metal fragment, one bird bone, one mammal bone, one sediment sample and two lots of unmodified shell, mammal, and fish bone fragments.

The Handel farm site is located approximately five miles west of Mt. Vernon and the Tronsdal Site (45–SK–37) is located in the Skagit River delta. Both sites are located in southwest Skagit County. The human remains in this notice have been determined to be Native American based on biological and archeological evidence. The Tronsdal Site is a shell midden site. Material culture observed at the site include projectile points, mauls, adze blades, red ochre, bone bipoints and faunal material is consistent with Native American Coast Salish material culture.

Based on archeological evidence, the human remains are Native American. Linguistically, Native American speakers of the northern dialect of the Lushootseed language claim cultural heritage to the Skagit River delta area. Historical and anthropological sources (Amoss 1978, Mooney 1896, Snyder, Spier 1936, and Swanton 1952) indicate that the Kikiallus, Swinomish, Lower Skagit, and Upper Skagit occupied and had village sites within the Skagit River delta area. Oral history provided by the Stillaguamish and legal testimony during the Indian Claims Commission also indicates that the Stillaguamish utilized the Skagit River delta and Skagit Bay area for hunting, fishing, and clamming (Grady 2012:3). Today, descendants of Kikiallus are members of the Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington). Today, the Lower Skagit are represented by the Swinomish Indians of the Swinomish Reservation of Washington. The Upper Skagit are represented by the Upper Skagit Indian Tribe.

**Determinations Made by the Burke Museum and Central Washington University**

Officials of the Burke Museum and Central Washington University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 11 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the eight objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 35010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu*, or Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *deleonl@cwu.edu*, by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe may proceed.

The Burke Museum is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: August 14, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23821 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13823; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: The Michigan State University Museum, East Lansing, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Michigan State University Museum (MSUM) has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the MSUM. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the MSUM at the address in this notice by October 30, 2013.

**ADDRESSES:** Jaclyn Lillis-Warwick, MSUM, 409 West Circle Drive, East Lansing, MI 48824, telephone (517) 432–4339, email *lillisja@msu.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the MSUM. The human remains were removed from Jackson County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the MSUM professional staff in consultation with representatives of the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

#### History and Description of the Remains

In September and October of 1978, human remains representing, at minimum, 10 individuals were removed from the Sanuskar Site (20JA150) in Pulaski Township, Jackson County, MI. Prior to the excavation, the private property owner had performed extensive earthmoving on his property, primarily cutting and grading to obtain fill materials. During subsequent cutwork, the property owner encountered bone, and removed a human cranium from the site. The Jackson Post of the Michigan State Police was contacted on September 20, 1978, and an investigative team visited the property. When human materials were identified as prehistoric, Dr. Saur at Michigan State University (MSU) was contacted. A team of MSU archeologists excavated the site and, upon completion of the project, the MSUM curated the human remains.

Four individual burials were identified. Individual 1 was a virtually complete, flexed burial and was identified as a mid-adult female. Individual 2 was a virtually complete, except for arms and legs, extended burial and was identified as a late-adult female. Individual 3 was a fragmented burial identified as an adult male. Individual 4 was a fragmented burial identified as a young-adult male. The remaining human remains, representing at minimum six additional individuals, included a cranial piece, four ribs, five long bone fragments, four tarsal fragments, and numerous other unidentifiable bone fragments. No known individuals were identified. No associated funerary objects are present. The human remains date to the Late Prehistoric era based on the structure of the mortuary domain being consistent with burial practices.

#### Determinations Made by the Michigan State University Museum

Officials of the MSUM have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American, based on age and burial practices.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Pokagon Band of Potawatomi Indians, Michigan and Indiana and the Grand River Band of Odawa Indians (GRBOI), a non-Federally recognized Indian group.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land the Pokagon Band of Potawatomi Indians, Michigan and Indiana and the Grand River Band of Odawa Indians (GRBOI), a non-Federally recognized Indian group.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

#### Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jaclyn Lillis-Warwick, MSUM, 409 West Circle Drive, East Lansing, MI 48824, telephone (517) 432–4339, email lillisja@msu.edu, by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, may proceed.

The MSUM is responsible for notifying the Pokagon Band of Potawatomi Indians, Michigan and Indiana that this notice has been published.

Dated: August 21, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23820 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14079; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, Reno, NV

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada State Office has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the BLM. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the BLM Nevada State Office at the address in this notice by October 30, 2013.

**ADDRESSES:** Mark Hall, Native American Coordinator, Bureau of Land Management, Winnemucca District Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445, telephone (775) 623–1529, email *mehall@blm.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the BLM Nevada State Office, Reno, NV. The human remains and associated funerary objects were removed from Elephant Mountain Cave, in Humboldt County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains and associated funerary objects was made by the BLM Nevada State Office professional staff in consultation with representatives of the Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias); Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; and Summit Lake Paiute Tribe of Nevada. The following tribes were invited to consult, but did not respond: Alturas Indian Rancheria, California; Big Pine Paiute Tribe of Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of Fort Independence Reservation, Califonia; Klamath Tribes; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Winnemucca Indian Colony of Nevada.

**History and Description of the Remains**

In the 1980s, human remains representing, at minimum, two individuals were illegally excavated from Elephant Mountain Cave in Humboldt County, NV. The human remains were recovered by State of Oregon law enforcement during the course of an investigation in 1995. Oregon law enforcement turned over the human remains, associated funerary objects, and other artifacts removed from the cave to the BLM Nevada State Office in 1999 and 2007. These materials were deposited in the Nevada State Museum by the BLM in 1999 and 2007. No historically known individuals were identified. The 22 associated funerary objects include 2 baskets, 4 nets/net fragments, 2 rattles or bracelets made of perforated artiodactyl hooves and sinew string, 7 moccasins, 5 bifaces, 1 jasper flake, and 1 shell pendant.

One set of human remains (NSM AHUR 6009) consists of a nearly complete skeleton of a child aged 6–8 years old. The sex of the individual could not be determined. The basket in which this individual was buried in dates to 2060 ± 60 years before present (bp). The other set of human remains (NSM AHUR 6010) consists of a nearly complete skeleton of a female, 9–12 years old. The basket in which this individual was buried dates to 2080 ± 60 years bp.

The human remains were determined to be Native American based on the geographical location, age, biological information, and the nature of the associated funerary objects, which relate to other similar archeological and anthropological evidence of Native Americans in the northern Great Basin and nearby areas.

Multiple lines of evidence—guided by tribal consultations—including geographic, oral tradition, archeological, genetic, and aboriginal land claims, demonstrate a shared group identity between these human remains and some of the modern-day tribes of the Northern Paiutes. In addition, final judgments of the Indian Claims Commission show that the land from which the Native American human remains were removed is the aboriginal land of some of the Northern Paiutes. Today, the culturally affiliated tribes of the Northern Paiutes are: the Alturas Indian Rancheria, California; Big Pine Paiute Tribe of Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Fort Bidwell Indian Community of the Fort Bidwell Reservation of California; Fort Independence Indian Community of Paiute Indians of Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Klamath Tribes; Lone Pine Paiute-Shoshone Tribe (previously

listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Winnemucca Indian Colony of Nevada (hereafter referred to as ''The Tribes'').

**Determinations Made by the BLM Nevada State Office**

Officials of the BLM Nevada State Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 22 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mark Hall, Native American Coordinator, Bureau of Land Management, Winnemucca District Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445, telephone (775) 623–1529, email mehall@blm.gov, by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The BLM Nevada State Office is responsible for notifying The Tribes that this notice has been published.

Dated: September 12, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23818 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13512; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Colorado State University, Fort Collins, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Colorado State University has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Colorado State University, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Colorado State University, Department of Anthropology at the address in this notice by October 30, 2013.

**ADDRESSES:** Christopher Green, Colorado State University, B–218 Clark Building, c/o Christopher Green, 1787 Campus Delivery, Fort Collins, CO 80525, telephone (970) 213–3060, email *cg99@rams.colostate.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Colorado State University, Department of Anthropology, Fort Collins, CO. The human remains were removed from unknown locations, most likely from the state of Colorado.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Colorado State University, Department of Anthropology professional staff in consultation with representatives of the Arapaho Tribe of Wind River Reservation, Wyoming; Cheyenne & Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Navajo Nation, Arizona, New Mexico & Utah; Pueblo of San Ildefonso, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. The following tribes were also invited to participate but were not involved in the consultations: Crow Tribe of Montana; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of Northern Cheyenne Indian Reservation, Montana; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Pawnee Nation of Oklahoma; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Pueblo of Cochiti, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Shoshone Tribe of Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter all tribes listed in this section are referred to as ''The Consulted and Notified Tribes'').

**History and Description of the Remains**

For the cases listed in this notice, the human remains were catalogued and curated by Colorado State University after the date of removal. The age of the human remains and the skeletal wear are consistent with Native American ancestry. Colorado State University, as regular practice, retained only Native

American human remains in its collection. Collection and archival research by Dr. Jason LaBelle and Dr. Ann Magennis between 2005 and 2010, failed to find any documentation regarding these human remains. Therefore, based on these facts and after consultation with the tribes, Colorado State University has determined that all of the remains listed in this notice are Native American and culturally unidentifiable.

Sometime before 1969, human remains representing, at minimum, 26 individuals were removed from unknown locations. Case # 1 represents the partial remains of a child. Cases # 2, 3, 4, 5, and 6 represent the partial remains of at least five individuals, including adults and one sub-adult. Cases # 7, 8, 9, 10, 11, and 12 represent the partial remains of at least six individuals, including adults and sub-adults. Cases # 13, 14, 15, 16, 17, 18a and 18b represent the partial remains of at least seven individuals, including four adults and three sub-adults. Cases # 19, 20, and 21 represent the partial remains of at least three individuals, including one adult and two sub-adults. Cases # 28, 29, and 30 represent the partial remains of at least three individuals, all adults. Case # 31 represents the partial remains of an adult. No known individuals were identified. No associated funerary objects are present.

Sometime before 1970, human remains representing, at minimum, ten individuals were removed from unknown locations. Case # 34 represents the partial remains of one adult with occipital flattening. Animal bone was collected with the remains, though the association between the animal bones and human remains is unknown. Case # 33 represents the partial remains of an adult. Cases # 35 and 36 represent the partial remains of one adult female with occipital flattening and the fragments of a second individual. Case # 37 represents a cranium with occipital flattening. Cases # 38 and 39 represent the partial remains of two adults. Case # 40 represents an incomplete cranium with occipital flattening. Cases # 43 and 44 represent the partial remains of two individuals. No known individuals were identified. No associated funerary objects are present.

Sometime before 1971, human remains representing, at minimum, seven individuals were removed from unknown locations. Case # 46 represents the partial remains of one adult male with occipital flattening. Case # 47 represents the partial remains of an adult. Case # 48 represents the partial remains of an adult, probably male. For these three cases, animal bone was collected with the remains, though the association between the animal bone and human remains is unknown. Case # 45 represents the partial remains of an adult. Cases # 52a and 52b represent the partial remains of one adult and another fragmentary individual. Case # 53represents the partial remains of an adult. No known individuals were identified. No associated funerary objects are present.

On June 30, 1976, human remains representing, at minimum, one individual were removed from an unknown location. Case # 55 represents the remains of an adult male. No known individuals were identified. No associated funerary objects are present.

Sometime before August 1991, human remains representing, at minimum, six individuals were removed from unknown locations. Case # 71 represents the partial remains of one adult male with occipital flattening. Case # 72 represents the partial remains of an adult female. A modern animal pelt was curated with the human remains, but based on age, it is not associated with the human remains. Cases # 73, 74, and 75 represent the partial remains of at least three individuals. Case # 76 represents the extremely fragmentary remains of an individual. No known individuals were identified. No associated funerary objects are present.

Pursuant to 43 CFR 10.16, the Secretary of the Interior may make a recommendation for a transfer of control of culturally unidentifiable human remains. In May 2013, Colorado State University requested that the Secretary, through the Native American Graves Protection and Repatriation Review Committee, recommend the proposed transfer of control of the culturally unidentifiable Native American human remains in this notice to the Ute Mountain Tribe of Ute Mountain Reservation, Colorado, New Mexico & Utah. The Review Committee, acting pursuant to its responsibility under 25 U.S.C. 3006(c)(5), considered the request at its May 2013 meeting and recommended to the Secretary that the proposed transfer of control proceed. An August 1, 2013 letter on behalf of the Secretary of Interior from the Designated Federal Official transmitted the Secretary's independent review and concurrence with the Review Committee that:

- Colorado State University consulted with every appropriate Indian tribe or Native Hawaiian organization,
- none of the consulted tribes objected to the proposed transfer of control, and
- Colorado State University may proceed with the agreed-upon transfer of control of the culturally unidentifiable human remains to the Ute Mountain Tribe of Ute Mountain Reservation, Colorado, New Mexico & Utah.

Transfer of control is contingent on the publication of a Notice of Inventory Completion in the **Federal Register.** This notice fulfills that requirement.

**Determinations Made by Colorado State University**

Officials of Colorado State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the condition, the assemblage, and the age of the remains.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 50 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.16, the disposition of the human remains will be to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

**Additional Requestors and Disposition**

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Christopher Green, Colorado State University, B–218 Clark Building, c/o Christopher Green, 1787 Campus Delivery, Fort Collins, CO 80525, telephone (970) 213–3060, email cg99@rams.colostate.edu, by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

Colorado State University is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: August 13, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23824 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–14063; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: University of Massachusetts Amherst, Department of Anthropology, Amherst, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of Massachusetts Amherst, Department of Anthropology, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Massachusetts Amherst, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Massachusetts Amherst, Department of Anthropology, at the address in this notice by October 30, 2013.

**ADDRESSES:** Rae Gould, Repatriation Coordinator, University of Massachusetts Amherst, Department of Anthropology, 215 Machmer Hall, 240 Hicks Way, Amherst, MA 01003, telephone (413) 545–2702, email *rgould@anthro.umass.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Massachusetts Amherst, Department of Anthropology. The human remains and associated funerary objects were removed from the Kramer Site, Ross County, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the University of Massachusetts Amherst, Department of Anthropology, professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Cherokee Nation; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Leech Lake Band of Minnesota Chippewa Tribe, Minnesota; Little Traverse Bay Band of Odawa Indians, Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Saginaw Chippewa Indian Tribe of Michigan; Shawnee Tribe; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereafter referred to as ''The Tribes'').

Representatives of the University of Massachusetts Amherst, Department of Anthropology, also contacted but did not consult with the Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of Minnesota Chippewa Tribe, Minnesota; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Lake Band of Chippewa Indians, Minnesota; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Tribe of Oklahoma; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); United Keetoowah Band of Cherokee Indians in Oklahoma; White Earth Band of Minnesota Chippewa Tribe, Minnesota; Wyandotte Nation; and the Grand River Band of Ottawa Indians, Michigan, a non-Federally recognized Indian group.

#### History and Description of the Remains

In 1967, Dr. Olaf Prufer and Dr. Oriol Pi-Sunyer, then Professors at the University of Massachusetts Amherst, Department of Anthropology, led an archeological field school focused primarily on the Kramer site (33Ro33), in Union Township, Ross County, OH. Archeologists have identified the Kramer site as a large Fort Ancient village with a small central mound. The 1967 excavation took place in the village area, southeast of the mound. Human remains representing, at minimum, one individual were removed from the Kramer site by Dr. Oriol Pi-Sunyer and the field school students. These human remains, along with the associated funerary objects, were transferred to the University of Massachusetts Amherst, Department of Anthropology, for curation. No known individuals were identified. The 762 associated funerary objects are 4 projectile points, 61 stone tools, 1 stone pipe fragment, 106 bone tools, 40 bone beads, 5 bone tubes, 40 animal teeth, 8 fish hook and fragments, 47 shell tools, 1 shell bead, 4 soil samples, 2 clay fragments, 1 wattle and daub fragment, 1 charred wood fragment, 2 wasp nest fragments, 43 lots of faunal remains, 198

lots of pottery fragments, 164 lots of stone fragments, and 34 lots of shell fragments.

Based on an archeological assessment of the cultural materials, the Kramer site is associated with the Fort Ancient Tradition of the Scioto River drainage in Ohio. The Fort Ancient Tradition spanned from 950 to 1450 A.D. and possibly into the 1700's according to some archeologists. The cultural material recovered from the Kramer Site is associated with all phases of the Fort Ancient Tradition. The University of Massachusetts Amherst, Department of Anthropology, considers the Kramer site to be associated with the Fort Ancient Tradition.

Multiple lines of evidence—guided by tribal consultations—including geographic, oral tradition, archeological, historical records, and treaties demonstrate a shared group identity between these human remains and the modern-day tribes of the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Saginaw Chippewa Indian Tribe of Michigan; and the Shawnee Tribe.

**Determinations Made by the University of Massachusetts Amherst, Department of Anthropology**

Officials of the University of Massachusetts Amherst, Department of Anthropology, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 762 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects to the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Saginaw Chippewa Indian Tribe of Michigan; and the Shawnee Tribe.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Rae Gould, Repatriation Coordinator, University of Massachusetts Amherst, Department of Anthropology, 215 Machmer Hall, 240 Hicks Way, Amherst, MA 01003, telephone (413) 545–2702, email *rgould@anthro.umass.edu,* by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Saginaw Chippewa Indian Tribe of Michigan; and the Shawnee Tribe may proceed.

The University of Massachusetts Amherst, Department of Anthropology is responsible for notifying The Tribes that this notice has been published.

Dated: September 12, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23815 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–13770; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA, and Central Washington University, Ellensburg, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), and Central Washington University have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Burke Museum or Central Washington University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Burke Museum or Central Washington University at the address in this notice by October 30, 2013.

**ADDRESSES:** Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email plape@uw.edu, and Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email deleonl@cwu.edu.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Burke Museum and Central Washington University. The human remains were removed from Island County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains and associated funerary objects was made by the Burke Museum and Central Washington University professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation; Puyallup Tribe of the Puyallup Reservation; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe (hereafter referred to as ''The Consulted Tribes'').

**History and Description of the Remains**

In 1926, human remains representing, at minimum, four individuals were removed from San de Fuca in Island County, WA. The human remains were

removed by M.E. Hingston and donated to the Burke Museum in 1926 (Burke Accn. #2134). The remains were found under six inches of clam shells from a known Indian burial site. In 1974, the Burke Museum staff legally transferred elements associated with the individuals to Central Washington University (CWU AS and BR). No known individuals were identified. No associated funerary objects are present.

In 1937, human remains representing, at minimum, five individuals were removed from Camano Island in Island County, WA. The human remains were removed during a museum expedition led by Cane Schwarder and accessioned by the Burke Museum in 1937 (Burke Accn. #2958). In 1974, the Burke Museum staff legally transferred elements associated with the individuals to Central Washington University (CWU BS, BT, and DJ). No known individuals were identified. No associated funerary objects are present.

In 1940, human remains representing, at minimum, five individuals were removed from Rocky Point in Island County, WA. The human remains were removed from a known Native cemetery after reports of vandalism. The cultural items were removed by a museum expedition led by Wayne Suttles and transferred to the Burke Museum in 1940 (Burke Accn. #3164). In 1974, the Burke Museum staff legally transferred elements and cultural items associated with the individuals to Central Washington University (CWU AT). No known individuals were identified. The 15 associated funerary objects are one shaker bell, one bowl, one porcelain doll, one porcelain figurine, two porcelain cups, one ointment jar, one tin can, one metal ring, one metal button, two fragmentary sets of shoes, one lot of nails and burial box pieces, and two unmodified shells.

The sites described in this notice are located either in the Penn Cove area of Whidbey Island or on the northwestern shore of Camano Island. The human remains have been determined to be Native American based on a variety of sources, including archeological and biological evidence. The human remains were determined to be consistent with Native American morphology as evidenced either through cranial deformation, bossing of the cranium, presence of wormian bones, or shovel shaped incisors.

Based on archaeological evidence, the human remains are Native American. Linguistically, Native American speakers of the northern dialect of the Lushootseed language claim cultural heritage to the Northern Puget Sound area. Culturally Native Americans from the Northern Puget Sound area are members of Southern Coast Salish tribes. Historical and anthropological sources (Deur 2009, Mooney 1896, Roberts 1975, Ruby and Brown 1986, Spier 1936, and Swanton 1952) indicate that the Kikiallus, Swinomish, Lower Skagit and Stillaguamish peoples occupied and had village sites in the Penn Cove area and on the northwestern shore of Camano Island. Although the Indian Claims Commission determined that the sites near Penn Cove on Whidbey Island fell within the aboriginal territory of the Lower Skagit, shortly after 1855, anthropologists and historians described this area as a mixed community. Penn Cove was one of the communities where the Stillaguamish and other tribes were told to move after being forced to leave their villages on the mainland (Deur 2009, and Grady 2012).

Today, descendants of Kikiallus are members of the Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington). Today, the Lower Skagit are primarily members of the Swinomish Indians of the Swinomish Reservation of Washington and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington).

**Determinations made by the Burke Museum and Central Washington University**

Officials of the Burke Museum and Central Washington University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 14 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 15 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington).

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu*, or Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *deleonl@cwu.edu*, by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) may proceed.

The Burke Museum is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: August 14, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23822 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13769; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA, and Central Washington University, Ellensburg, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Thomas Burke Memorial Washington State Museum, University of Washington (Burke Museum), and Central Washington University have completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and have determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any

Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Burke Museum or Central Washington University. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Burke Museum or Central Washington University at the address in this notice by October 30, 2013.

**ADDRESSES:** Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu*, and Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *deleonl@cwu.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Burke Museum and Central Washington University. The human remains were removed from Snohomish and Island Counties, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

## Consultation

A detailed assessment of the human remains was made by the Burke Museum and Central Washington University professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington); Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe (hereafter referred to as ''The Consulted Tribes'').

## History and Description of the Remains

In 1933, human remains representing, at minimum, three individuals were removed from Holmes Harbor on southern Whidbey Island in Island County, WA. The human remains were removed by A.O. Soreng and subsequently donated to the Burke Museum in 1941 (Burke Accn. #3183). In 1974, the Burke Museum staff legally transferred elements associated with the individuals to Central Washington University (CWU N). No known individuals were identified. No associated funerary objects are present.

In 1939, human remains representing, at minimum, two individuals were removed from Warm Beach in the Port Susan area in Snohomish County, WA. The human remains were found by a road crew and collected by Hillman Investment Company. The human remains were donated to the Burke Museum in 1939 (Burke Accn. #3101). In 1974, the Burke Museum staff legally transferred elements associated with the individuals to Central Washington University (CWU BM). No known individuals were identified. No associated funerary objects are present.

Based on cranial morphology, the human remains are Native American. Linguistically, Native American speakers of the northern dialect of the Lushootseed language claim cultural heritage to the Port Susan area in Snohomish County and southern Whidbey Island. Historical and anthropological sources (Hollenbeck 1987, Mooney 1896, Ruby and Brown 1986, Spier 1936, and Swanton 1952) indicate that the Snohomish and Stillaguamish peoples occupied southern Whidbey Island and the Port Susan area. The Indian Claims Commission determined that the aboriginal territory of the Snohomish people includes parts of both locations, albeit not the entirety of both sites. Today, descendants of the Snohomish are represented by the Tulalip Tribes of Washington. Holmes Harbor was one of the areas where the Stillaguamish and other tribes were told to move after being forced to leave their villages on the mainland (Deur 2009, Grady 2012).

## Determinations Made by the Burke Museum and Central Washington University

Officials of the Burke Museum and Central Washington University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington) and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington).

## Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–3849, email *plape@uw.edu,* or Lourdes Henebry-DeLeon, Department of Anthropology, Central Washington University, 400 East University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *deleonl@cwu.edu,* by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Stillaguamish Tribe of Indians of Washington (previously listed as Stillaguamish Tribe of Washington) and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) may proceed.

The Burke Museum is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: August 14, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23823 Filed 9–27–13; 8:45 am]

BILLING CODE 4312–50–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13941; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Fort Lewis College, Durango, CO; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The Fort Lewis College has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on October 11, 2011. This notice corrects the number of associated funerary objects.

**ADDRESSES:** Dawn Mulhern, Department of Anthropology, Fort Lewis College, 1000 Rim Dr., Durango, CO 81301, telephone (970) 247–7500, email *MULHERN_D@fortlewis.edu*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Fort Lewis College. The human remains and associated funerary objects were removed from La Plata, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (76 FR 62835–62838, October 11, 2011). The number of associated funerary objects was incorrectly reported in the original notice. Transfer of control of the items in this correction notice has occurred.

*Correction*

In the **Federal Register** (76 FR 62835–62838, October 11, 2011), paragraph 29, sentence five is corrected by substituting the following sentence:

> The six associated funerary objects are 1 Chapin grey pitcher, 1 greyware jar, 1 Chapin black-on-white bowl, 1 Piedra black-on-white bowl, 1 lot of shell beads, and 1 Chapin grey jar.

In the **Federal Register** (76 FR 62835–62838, October 11, 2011), paragraph 56 is corrected by substituting the following sentence:

> Pursuant to 25 U.S.C. 3001(3)(A), the 151 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

The Fort Lewis College is responsible for notifying the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta Del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 27, 2013.

**David Tarler,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–23816 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13861; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Michigan State Police, Jackson Post, Jackson, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Michigan State Police, Jackson Post (MSP 13) has completed an inventory of human remains, following the initiation of consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of the human remains should submit a written request to the MSP 13. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the MSP 13 at the address in this notice by October 30, 2013.

**ADDRESSES:** Sergeant Greg Jones, Michigan State Police, 3401 Cooper St., Jackson, MI 49201, telephone (517) 780–4580, email *jonesg6@michigan.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of MSP 13. The human remains were removed from Waterloo Township, Jackson County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the human remains. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Michigan State University Anthropology Department on behalf of the Michigan State Police. The following tribes were notified, but did not participate in consultation: Bay Mills Indian Community, Michigan; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Band of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of

Chippewa Indians, Michigan (hereafter referred to as ''The Notified Tribes'').

**History and Description of the Remains**

On November 19, 1972, human remains representing, at minimum, one individual were removed from a private residence in Waterloo Township, Jackson County, MI, following their discovery by the homeowner while digging a septic hole. The homeowner contacted the Michigan State Police Jackson Post (complaint 41–5894–72) who took possession of the human remains and transferred them to the Michigan State University, Anthropology Department, for analysis. The Michigan State University determined that the human remains belonged to one adult Native American. The human remains were returned to the Michigan State Police Jackson Post in July 2013. No known individuals were identified. No associated funerary objects are present.

**Determinations Made by the Michigan State Police**

Officials of Michigan State Police have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on forensic inspection of the remains by the Michigan State University Anthropology Department.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of The Notified Tribes.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Notified Tribes.
- Pursuant to 43 CFR 10.11(c)(2)(i), the disposition of the human remains may be to The Notified Tribes.

**Additional Requestors and Disposition**

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sergeant Greg Jones, Michigan State Police, Jackson Post, 3401 Cooper Street, Jackson, MI 49203, telephone (517) 780–4580, email *jonesg6@michigan.gov,* by October 30, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Notified Tribes may proceed.

The Michigan State Police is responsible for notifying The Notified Tribes that this notice has been published.

Dated: August 19, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23812 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13892; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Tumacacori National Historical Park, Tumacacori, AZ; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The U.S. Department of the Interior, National Park Service, Tumacacori National Historical Park has corrected an inventory of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** on July 17, 2009. This notice corrects the number of associated funerary objects. Transfer of control of the items in this correction notice has occurred.

**ADDRESSES:** Bob Love, Superintendent, Tumacacori National Historical Park, P.O. Box 8067, Tumacacori, AZ 85640, telephone (520) 398–2341 Ext. 52, email *bob_love@nps.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of Tumacacori National Historical Park, Tumacacori, AZ. The human remains and associated funerary objects were removed from San Miguel de Guevavi Mission, Santa Cruz County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Tumacacori National Historical Park.

This notice corrects the number of associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (74 FR 34775–34776, July 17, 2009). After publication, one additional associated funerary object was found. Transfer of control of the items in this correction notice has occurred.

*Correction*

In the **Federal Register** (74 FR 34775–34776, July 17, 2009), the following paragraph is inserted after paragraph three:

> In 1947, one tinkler necklace was removed from a burial at San Miguel de Guevavi mission in Santa Cruz County, AZ by Clifford Burdick and was donated to the park. The human remains were removed from the site in 1991 and were described in a Notice of Intended Disposition published in a newspaper of general circulation in July 2009. The remains and object are from Mission Period contexts within a Jesuit church compound. No ceramic cremation vessels were found, indicating that the remains are historic burials.

In the **Federal Register** (74 FR 34775–34776, July 17, 2009), paragraph nine, sentence two is corrected by substituting the following sentence:

> Officials of Tumacacori National Historical Park also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 33 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

**Additional Requestors and Disposition**

Transfer of control of the human remains and associated funerary objects occurred after the 30 day waiting period expired for the original July 17, 2009 Notice of Inventory Completion. For questions related to this notice, contact Bob Love, Superintendent, Tumacacori National Historical Park, P.O. Box 8067, Tumacacori, AZ 85640, telephone (520) 398–2341 Ext. 52, email *bob_love@nps.gov.*

Tumacacori National Historical Park is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pascua Yaqui Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tohono O'odham Nation of Arizona; Tonto Apache Tribe

of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 21, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23800 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13725; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Arizona State Museum, University of Arizona, Tucson, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Indian Affairs, and Arizona State Museum, University of Arizona, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, have determined that the cultural item listed in this notice meets the definition of a sacred object. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the U.S. Department of the Interior, Bureau of Indian Affairs. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the U.S. Department of the Interior, Bureau of Indian Affairs at the address in this notice by October 30, 2013.

**ADDRESSES:** Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ, that meets the definition of sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

#### History and Description of the Cultural Item

At an unknown date in 1972 or 1973, one cultural item was removed from a site near Cave Spring, northwest of Shungopavi Village on Second Mesa, AZ. A frequent visitor to the Hopi Reservation removed this item and gave it away as a wedding present. The recipient of this item donated it to the Arizona State Museum in February 2008. The one sacred object is a bowl, identified by staff at the Arizona State Museum as Tusayan White Ware, and probably Flagstaff Black-on-white, a prehistoric pottery type, which dates to approximately A.D. 1200.

This item appears to be Hopi by virtue of the circumstances of its acquisition, and through identification by Hopi cultural specialists. This object is regarded as a sacred object and used by the Hopi as a cleansing medicine bowl for the practice of the Hopi ceremonies, including the Katsina home dances. The Hopi Cultural Preservation Office of the Hopi Tribe hereby asserts cultural affiliation to the sacred object.

#### Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and the Arizona State Museum, University of Arizona

Officials of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and the Arizona State Museum, University of Arizona, have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Hopi Tribe of Arizona.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, email *Anna.Pardo@bia.gov,* by October 30, 2013. After that date, if no additional claimants have come forward, transfer of control of the sacred object to the Hopi Tribe of Arizona may proceed.

The Bureau of Indian Affairs is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: August 6, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–23819 Filed 9–27–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[Docket No. BOEM–2013–0050; MMAA104000]**

### Potential Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Oregon, Request for Interest

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Public Notice of an Unsolicited Request for a Commercial OCS Wind Lease, Request for Interest (RFI), and Request for Public Comment.

**SUMMARY:** The purpose of this public notice is to: (1) Describe the proposal submitted to BOEM by Principle Power, Inc. (Principle Power) to acquire an OCS commercial wind lease; (2) solicit submissions of indications of interest in obtaining a commercial lease for wind energy development on the OCS offshore Oregon in the area described in this notice; and (3) solicit initial public input regarding the area described in this notice, the potential environmental consequences of wind energy development in the area, and the multiple uses of the area.

On May 15, 2013, BOEM received an unsolicited request from Principle Power for a commercial wind lease on the OCS offshore Oregon. Principle

Power's proposed project, the ''WindFloat Pacific Project,'' would consist of a floating wind energy demonstration facility offshore Coos Bay, Oregon. The project is designed to generate 30 megawatts (MW) of electricity from five floating ''WindFloat'' units, each equipped with a 6–MW offshore wind turbine, connected by inter-unit electrical cabling, with a single transmission cable exporting electricity to the mainland that would extend across both Federal and state lands. The project would be located approximately 16 nautical miles (nmi) west of Coos Bay, Oregon in water depths of approximately 1,400 feet. Additional information on Principle Power's unsolicited lease request can be viewed at *http://www.boem.gov/State-Activities-Oregon/.*

This RFI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR 585.231(b). Subsection 8(p)(3) of the OCS Lands Act requires that OCS renewable energy leases, easements, and rights-of-way be issued ''on a competitive basis unless the Secretary of the Interior (Secretary) determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.'' This RFI provides such public notice for the proposed lease area requested by Principle Power and invites the submission of indications of interest. BOEM is soliciting submissions of interest in commercial wind energy development with this notice. BOEM will consider the responses to this public notice to determine whether competitive interest exists for the area requested by Principle Power, as required by 43 U.S.C. 1337(p)(3). Parties wishing to obtain a commercial lease for wind energy development for the area described below under ''Description of the Proposed Lease Area'' should submit detailed and specific information as described in the section entitled, ''Required Indication of Interest Information.''

This announcement also requests that interested and affected parties comment and provide information about site conditions and multiple uses within the area identified in this notice that would be relevant to the proposed project or its impacts. This is the first step in the OCS renewable energy leasing process. There will be additional opportunities to provide comment pursuant to 30 CFR part 585 and applicable laws, such as the opportunity to comment on the environmental analysis that BOEM will prepare under the National Environmental Policy Act (NEPA), before any lease is issued. A detailed description of the proposed lease area can be found in the section of this notice entitled, ''Description of the Area.''

**DATES:** If you are submitting an indication of interest in acquiring a lease for the proposed lease area, your submission must be sent by mail, postmarked no later than October 30, 2013 for your submission to be considered. If you are providing comments or other submissions of information, you may send them by mail, postmarked by this same date, or you may submit them through the Federal eRulemaking Portal at *http://www.regulations.gov,* also by this same date.

**SUBMISSION PROCEDURES:** If you are submitting an indication of interest in a lease, please submit it by mail to the following address: Bureau of Ocean Energy Management, Pacific Region Office of Strategic Resources, 770 Paseo Camarillo, Second Floor, Camarillo, California 93010. Submissions must be postmarked by October 30, 2013 to be considered by BOEM for the purposes of determining competitive interest. In addition to a paper copy of your submission, include an electronic copy; BOEM considers an Adobe PDF file stored on a compact disk (CD) to be an acceptable format for submitting an electronic copy. BOEM will list the parties that submit indications of interest on the BOEM Web site after the 30-day comment period has closed.

If you are submitting comments or other information concerning the proposed lease area, you may use either of the following two methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry entitled, ''Enter Keyword or ID,'' enter BOEM–2013–0050 and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

2. Alternatively, comments may be submitted by mail to the following address: Bureau of Ocean Energy Management, Pacific Region Office of Strategic Resources, 770 Paseo Camarillo, Second Floor, Camarillo, California 93010.

If you wish to protect the confidentiality of your submissions or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this notice entitled, ''Privileged or Confidential Information.'' BOEM will post all comments on www.regulations.gov, unless labeled as confidential. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jean Thurston, Renewable Energy Program Specialist, BOEM, Pacific Region Office of Strategic Resources, 770 Paseo Camarillo, Second Floor, Camarillo, California 93010, Phone: (805) 384–4704.

**SUPPLEMENTARY INFORMATION:**

## Purpose of this RFI

Responses to this public notice will allow BOEM to determine, pursuant to 30 CFR 585.231, whether or not there is competitive interest in acquiring an OCS commercial wind lease in the proposed lease area. In addition, this notice provides an opportunity for interested stakeholders to comment on the proposed lease area, the proposed project, and any potential impacts wind energy development may have in the area. BOEM may use comments received to further identify and refine the area requested and inform future environmental analyses related to the project. This is the first opportunity for public input; additional opportunities will be provided pursuant to 30 CFR part 585 and applicable laws and BOEM practices.

If, in response to this notice, BOEM receives one or more indications of interest in offshore wind energy development from qualified entities that wish to compete for the proposed lease area, BOEM may decide to move forward with the lease issuance process using competitive procedures pursuant to 30 CFR Part 585. If BOEM receives no competing indications of interest from qualified companies, BOEM may decide to move forward with the lease issuance process using the non-competitive procedures contained in 30 CFR part 585.

## Background

### *National Offshore Wind Strategy*

In 2011, the U.S. Department of Energy (DOE) and Department of the Interior Office of Energy Efficiency and Renewable Energy released the National Offshore Wind Strategy, which identified challenges facing development of offshore wind energy and outlined actions to support the goals of developing an offshore wind industry in the United States. DOE's

Wind and Water Power Program released a formal Offshore Wind Innovation and Demonstration Initiative, consistent with the National Offshore Wind Strategy goals, to promote and accelerate responsible commercial offshore wind development in the United States. To address the objectives of the Strategy, funding was planned for Advanced Technology Demonstration Projects that verify innovative designs and technology developments and validate full performance and cost under real operating and market conditions. On December 12, 2012, the DOE announced award funding for seven proposed offshore wind demonstration projects under the ''Financial Assistance Funding Opportunity Announcement (DOE–FOA–0000410) U.S. Offshore Wind: Advanced Technology Demonstration Projects.'' The awards went to projects that demonstrated the ability to progress toward achieving the national goals of the National Offshore Wind Strategy. Principle Power submitted an application in response to the DOE–FOA–0000410 and was selected as one of the seven award recipients. From the seven original projects selected for an award, DOE will choose three projects for continued funding in the spring of 2014. Principle Power has submitted a lease request to BOEM in an effort to move forward in the DOE funding process.

**Determination of Competitive Interest and Leasing Process**

After the publication of this announcement, BOEM will evaluate indications of interest in acquiring a commercial lease in the proposed lease area. At the conclusion of the comment period for this public notice, BOEM will review the submissions received and undertake a completeness review for each of those submissions and a qualifications review for each of the nominating entities. BOEM will then make a determination as to whether competitive interest exists.

If BOEM determines that there is no competitive interest in the proposed lease area, it will publish a notice stating that there is no competitive interest in the **Federal Register**. At that point, BOEM may decide to proceed with the noncompetitive lease issuance process pursuant to 30 CFR 585.231, and Principle Power would need to submit any required plan(s). If BOEM determines that there is competitive interest, it may move forward with the leasing process outlined in 30 CFR 585.211.

Whether following competitive or non-competitive procedures, BOEM would consult with the BOEM Oregon Intergovernmental Renewable Energy Task Force and comply with all applicable requirements before making a decision on whether or not to issue a lease and approve, disapprove, or approve with modifications any associated plan(s). BOEM would coordinate and consult, as appropriate, with relevant Federal agencies, affected tribes, affected state agencies and affected local governments during the lease development and issuance process.

**Description of the Proposed Lease Area**

The proposed lease area is located off the coast of Oregon, approximately 16 nmi west of, Coos Bay, Oregon. From its most northeastern point the area extends approximately 5.18 nmi south and 2.59 nmi west. The project area consists of four partial OCS blocks. The entire area is approximately 15.01159 square miles (9,607.419 acres or 3,888 hectares).

TABLE 1—LIST OF OCS BLOCKS INCLUDED IN THE REQUEST FOR INTEREST

| Protraction name | Protraction number | Block number | Sub block |
|---|---|---|---|
| Coos Bay | NK 10–01 | 6573 | L,P |
| Coos Bay | NK 10–01 | 6574 | A,B,C,E,F,G,I,J,K,M,N,O |
| Coos Bay | NK 10–01 | 6623 | D,H,L,P |
| Coos Bay | NK 10–01 | 6624 | A,B,C,E,F,I,J,M,N |

The boundary of the proposed lease area follows the points listed in Table 2 in clockwise order. Point numbers 1 and 25 are the same. Coordinates are provided in X, Y (eastings, northings) UTM Zone 18N, NAD 83 and geographic (latitude, longitude) NAD83.

TABLE 2—LIST OF BOUNDARY POINTS INCLUDED IN THE REQUEST FOR INTEREST

| Point number | X (Easting) | Y (Northing) | Latitude | Longitude |
|---|---|---|---|---|
| 1 | 360800 | 4804800 | 43.383163617505 | −124.71850250843 |
| 2 | 359600 | 4804800 | 43.3829400824461 | −124.733310553746 |
| 3 | 359600 | 4806000 | 43.3937405007104 | −124.733618431238 |
| 4 | 359600 | 4807200 | 43.4045408967447 | −124.733926479511 |
| 5 | 359600 | 4808400 | 43.4153412705474 | −124.734234698679 |
| 6 | 359600 | 4809600 | 43.4261416221169 | −124.734543088854 |
| 7 | 359600 | 4810800 | 43.4369419514513 | −124.73485165015 |
| 8 | 359600 | 4812000 | 43.4477422585492 | −124.735160382679 |
| 9 | 360800 | 4812000 | 43.4479662972019 | −124.720336552948 |
| 10 | 360800 | 4813200 | 43.4587666660974 | −124.720642820982 |
| 11 | 360800 | 4814400 | 43.4695670127825 | −124.720949259014 |
| 12 | 362000 | 4814400 | 43.4697892973427 | −124.706119986029 |
| 13 | 363200 | 4814400 | 43.4700096596489 | −124.691290544395 |
| 14 | 364400 | 4814400 | 43.4702280996417 | −124.676460935576 |
| 15 | 364400 | 4813200 | 43.4594275050812 | −124.676162410122 |
| 16 | 364400 | 4813200 | 43.4486268883978 | −124.675864050282 |
| 17 | 364400 | 4810800 | 43.437826249593 | −124.675565855946 |
| 18 | 364400 | 4809600 | 43.4270255886685 | −124.675267827005 |
| 19 | 364400 | 4808400 | 43.4162249056256 | −124.67496996335 |

TABLE 2—LIST OF BOUNDARY POINTS INCLUDED IN THE REQUEST FOR INTEREST—Continued

| Point number | X (Easting) | Y (Northing) | Latitude | Longitude |
|---|---|---|---|---|
| 20 | 363200 | 4808400 | 43.4160068748692 | −124.689786398592 |
| 21 | 363200 | 4807200 | 43.4052062514705 | −124.689486069775 |
| 22 | 363200 | 4806000 | 43.394405605928 | −124.689185907484 |
| 23 | 363200 | 4804800 | 43.3836049382433 | −124.688885911607 |
| 24 | 362000 | 4804800 | 43.3833852361241 | −124.703694293898 |
| 25 | 360800 | 4804800 | 43.383163617505 | −124.71850250843 |

**Map of the Area**

A map of the area proposed by Principle Power and included in this RFI can be found at the following URL: *http://www.boem.gov/State-Activities-Oregon/*. A large scale map of the proposed lease area showing boundaries of the area with the numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Pacific Region Office of Strategic Resources, 770 Paseo Camarillo, Second Floor, Camarillo, California 93010.

**Department of Defense Activities and Stipulations**

The Department of Defense (DOD) conducts offshore testing, training, and operations on the OCS and may request that BOEM condition any activities that might take place in the proposed lease area. BOEM will consult with DOD regarding potential issues concerning offshore testing, training, and operational activities, and will develop appropriate stipulations to mitigate the effects of renewable energy activities on any DOD activities in the proposed lease area.

**Required Indication of Interest Information**

If you intend to submit an indication of interest in a lease for the area identified in this notice, you must provide the following:

(1) A statement that you wish to acquire a commercial wind lease within the proposed lease area. For BOEM to consider your indication of interest, it must include a proposal for a wind power project within the proposed lease area. Any request for a commercial wind lease located outside of the proposed lease area should be submitted separately pursuant to 30 CFR 585.230;

(2) A general description of your objectives and the facilities that you would use to achieve those objectives;

(3) A general schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area that you wish to lease, including energy and resource data and information used to evaluate the area of interest. Where applicable, spatial information should be submitted in a format compatible with ArcGIS 9.3 in a geographic coordinate system (NAD 83);

(5) Documentation demonstrating that you are legally qualified to hold a lease as set forth in 30 CFR 585.106 and part 107. Examples of the documentation appropriate for demonstrating your legal qualifications and related guidance can be found in Chapter 2 and Appendix B of the *Guidelines for the Renewable Energy Framework Guide Book* available at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see ''Protection of Privileged or Confidential Information Section,'' below); and

(6) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining and decommissioning the facilities described in (2) above. Guidance regarding the documentation that could be used to demonstrate your technical and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* If you wish that any part of your technical and financial qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see ''Protection of Privileged or Confidential Information Section,'' below).

Your complete submission, including the items identified in (1) through (6) above, must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a CD to be an acceptable format for submitting an electronic copy.

It is critical that you provide a complete submission of interest so that BOEM may consider your submission in a timely manner. If BOEM reviews your submission and determines that it is incomplete, BOEM will inform you of this determination in writing and describe the information that BOEM needs from you in order for BOEM to deem your submission complete. You will be given 15 business days from the date of the letter to provide the information that BOEM found to be missing from your original submission. If you do not meet this deadline, or if BOEM determines your second submission is also insufficient, BOEM may deem your submission invalid. In such a case, BOEM would not consider your submission.

**Requested Information From Interested or Affected Parties**

BOEM is also requesting from the public and other interested or affected parties specific and detailed comments regarding the following:

(1) Geological and geophysical conditions (including seabed conditions and shallow hazards) in the area described in this notice;

(2) Historic properties and archaeological resources potentially affected by the construction and installation of meteorological buoys or commercial wind development in the area identified in this notice;

(3) Other uses of the area described in this notice, including but not limited to navigation (commercial and recreational vessel usage), commercial and recreational fishing, recreational activities (e.g., wildlife viewing, and scenic areas), aviation, other energy related development activities, scientific research, and utilities and communications infrastructure (e.g., undersea cables);

(4) Other relevant environmental information, including but not limited to: protected species and habitats, marine mammals, sea turtles, birds, fish, and cultural resources;

(5) Socioeconomic information, such as demographics and employment, or

information relevant to environmental justice considerations.

**Protection of Privileged or Confidential Information**

*Freedom of Information Act*

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information, ''Contains Confidential Information,'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM will not treat as confidential: (1) The legal title of the nominating entity (for example, the name of your company) or (2) the geographic location of nominated facilities. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

**Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))**

BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate such information that they wish to be held as confidential.

Dated: September 19, 2013.

**Tommy P. Beaudreau,**

*Director, Bureau of Ocean Energy Management.*

[FR Doc. 2013–23699 Filed 9–27–13; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–474 & 731–TA–1176 (Final) (Remand)]**

## Drill Pipe and Drill Collars from China

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of remand proceedings.

**SUMMARY:** The U.S. International Trade Commission (''Commission'') hereby gives notice of the court-ordered remand of its affirmative threat determination in the final phase investigation of the antidumping and countervailing duty orders on drill pipe and drill collars from China. For further information concerning the conduct of this proceeding 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, subpart A (19 CFR part 207).

**DATES:** *Effective Date:* September 24, 2013

**FOR FURTHER INFORMATION CONTACT:** Nate Comly, Office of Investigations, telephone 202–205–3147, or David Goldfine, Office of General Counsel, telephone 202–205–3174, 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 of investigation Nos. 731–TA–340 E & H may be viewed on the Commission's electronic docket (''EDIS'') at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** *Background.* On August 19, 2013, the U.S. Court of International Trade (per Judge Stanceu) issued an opinion remanding certain aspects of the Commission's affirmative threat determination in *Drill Pipe and Drill Collars from China,* 701–TA–474 & 731–TA–1176 (Final), USITC Pub. 4213 (Feb. 2011). In the Commission's final determination, three Commissioners reached an affirmative threat determination (Commissioners Williamson, Pinkert, and Lane) while three Commissioners reached a negative determination (Chairman Okun, and Commissioners Pearson and Aranoff).

In its opinion, the Court concluded that the Commission made two erroneous findings. *Id.* at 11–19. In the Court's view, ''. . . the impermissible findings were that only smaller domestic purchasers, as opposed to purchasers the ITC considered 'large,' were buying subject merchandise at the start of the POI and that, during the POI, the participation of Chinese suppliers in the U.S. market broke through a prior limitation to smaller customers.'' *Id.* at 16.

The Court concluded that '' 'from these erroneous findings, the ITC reached the unsupported conclusion that 'the participation of suppliers of Chinese product in the U.S. market has evolved and grown over the period in ways that indicate further expansion is imminent,' and the related conclusion that 'the fact that suppliers of Chinese product have broken through a major prior limitation on their reach in the U.S. market is an indication that their U.S. market share is poised to increase.' '' *Id.* at 16 (internal citations omitted). On remand, the Court instructed the Commission to reconsider its affirmative threat determination ''on the whole, in the absence of these findings and conclusions.'' *Id.* at 17.

The Court also remanded two issues to the Commission for further explanation. First, the Court directed the Commission ''to explain why, and to what extent, it based its overall determination related to likely future import volume on its stated findings that the U.S. market share of subject merchandise was 'substantial' throughout the POI and 'grew' in first-half 2010.'' *Id.* at 20. Second, the Court instructed the Commission to provide further explanation in support of its finding that ''U.S. importers have increased their quantities of inventories of Chinese product to levels are particularly significant in the context of current market conditions.'' *Id.* at 21.

Under the remand schedule ordered by the Court, the Commission must file its remand determination by November 18, 2013.

*Participation in the proceeding.* Only those persons who were interested parties to the reviews (i.e., persons listed on the Commission Secretary's service list) and parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding. Business proprietary information (''BPI'') referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the reviews.

*Written submissions.* The Commission will permit the parties to file comments pertaining to the specific issues that are the subject of the Court's remand instructions. Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material. The parties may not themselves submit any new factual information in their comments and may not address any issue other than those that are the subject of the Court's remand instructions. Any such comments must be filed with the Commission no later than October 10, 2013.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Issued: September 25, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–23747 Filed 9–27–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Navigation Products, Including GPS Devices, Navigation and Display Systems, Radar Systems, Navigational Aids, Mapping Systems and Related Software,* DN 2983; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS,*[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC.*[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS.*[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Furuno Electric Co., Ltd. and Furuno U.S.A. Inc. on September 23, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain navigation products, including GPS devices, navigation and display systems, radar systems, navigational aids, mapping systems and related software. The complaint names as respondents Garmin Ltd. of Switzerland; Garmin International, Inc. of Olathe, KS; Garmin North America, Inc. of Olathe, KS; Garmin USA, Inc. of Olathe, KS; Navico Holding AS of Norway; Navico UK Limited of United Kingdom; Navico Inc. of Tulsa, OK; Raymarine, Inc. of Nashua, NH; and Raymarine UK Ltd. of United Kingdom. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing products during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2983'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*).[4] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 24, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–23674 Filed 9–27–13; 8:45 am]

**BILLING CODE 7020–02–P**

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Centennial Challenges 2014 Unmanned Aircraft Systems (UAS) Airspace Operations Challenge (AOC)

**AGENCY:** National Aeronautics and Space Administration (NASA).

**NOTICE:** (13–110).

**ACTION:** Notice.

**SUMMARY:** This notice is issued in accordance with 51 U.S.C. 20144(c).

The Unmanned Aircraft Systems (UAS) Airspace Operations Challenge (AOC) is scheduled and teams that wish to compete may now register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The 2014 UAS AOC is a prize competition designed to encourage development of new technologies or application of existing technologies in unique ways to how unpiloted or remotely piloted aircraft can safely operate in the same airspace as other aircraft, such as piloted aircraft, robotic aircraft, and their operators. NASA is providing the prize purse.

**DATES:** 2014 UAS AOC will be held April 28–May 2, 2014.

**ADDRESSES:** 2014 UAS AOC will be conducted at Camp Atterbury Joint Maneuver Training Center located near Edinburgh, Indiana.

**FOR FURTHER INFORMATION CONTACT:** To register for or get additional information regarding the 2014 UAS AOC, please visit: *http://www.uasaoc.org*

For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges*. General questions and comments regarding the program should be addressed to Dr. Larry Cooper, Centennial Challenges Program, NASA Headquarters 300 E Street SW., Washington, DC, 20546–0001. Email *address:hq-stmd-centennialchallenges@mail.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Summary

Competitor vehicles will fly a series of missions that will require them to safely address many of the technical issues important to integrating UAS in the National Airspace System. Several different types of scoring will apply during a single mission, depending upon the mission goals and the types of contingency situations that occur. Competitors will not have advance knowledge of the scenarios they will encounter and different teams will encounter scenarios in different sequences. The competitors will be provided with a standardized electronic module that will collect flight data that will be used as the reference for assigning scores.

### I. Prize Amounts

The total UAS AOC purse is $500,000 (five hundred thousand U.S. dollars). Prizes will be offered for entries that meet specific requirements detailed in the Rules.

### II. Eligibility

To be eligible to win a prize, competitors must (1) register and comply with all requirements in the rules and team agreement; (2) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and (3) shall not be a Federal entity or Federal employee acting within the scope of their employment.

### III. Rules

The complete rules and team agreement for the 2014 UAS AOC can be found at: *http://www.uasaoc.org*

Dated: September 23, 2013.

**James J. Reuther,**

*Deputy Associate Administrator for Programs, Space Technology Mission Directorate, National Aeronautics and Space Administration.*

[FR Doc. 2013–23757 Filed 9–27–13; 8:45 am]

**BILLING CODE 7510–13–P**

## OFFICE OF THE FEDERAL REGISTER

### Publication Procedures for Federal Register Documents During a Funding Hiatus

**AGENCY:** Office of the Federal Register.

**ACTION:** Notice of special procedures.

**SUMMARY:** In the event of an appropriations lapse, the Office of the Federal Register (OFR) would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

**FOR FURTHER INFORMATION CONTACT:** Amy Bunk, Director of Legal Affairs and Policy, or Miriam Vincent, Staff Attorney, Office of the Federal Register, National Archives and Records Administration, (202) 741–6030 or *Fedreg.legal@nara.gov*.

**SUPPLEMENTARY INFORMATION:**

Due to the possibility of a lapse in appropriations and in accordance with the provisions of the Antideficiency Act, as amended by Public Law 101–508, 104 Stat. 1388 (31 U.S.C. 1341), the Office of the Federal Register (OFR) announces special procedures for agencies submitting documents for publication in the **Federal Register**.

In the event of an appropriations lapse, the OFR would be required to publish documents directly related to the performance of governmental functions necessary to address

imminent threats to the safety of human life or protection of property. Since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act.

During a funding hiatus affecting one or more Federal agencies, the OFR will remain open to accept and process documents authorized to be published in the daily **Federal Register** in the absence of continuing appropriations. An agency wishing to submit a document to the OFR during a funding hiatus must attach a transmittal letter to the document which states that publication in the **Federal Register** is necessary to safeguard human life, protect property, or provide other emergency services consistent with the performance of functions and services exempted under the Antideficiency Act.

Under the August 16, 1995 opinion of the Office of Legal Counsel of the Department of Justice, exempt functions and services would include activities such as those related to the constitutional duties of the President, food and drug inspection, air traffic control, responses to natural or manmade disasters, law enforcement and supervision of financial markets. Documents related to normal or routine activities of Federal agencies, even if funded under prior year appropriations, will not be published.

At the onset of a funding hiatus, the OFR may suspend the regular three-day publication schedule to permit a limited number of exempt personnel to process emergency documents. Agency officials will be informed as to the schedule for filing and publishing individual documents.

**Authority:** The authority for this action is 44 U.S.C. 1502 and 1 CFR 2.4 and 5.1.

Dated: September 25, 2013.

**Charles A. Barth,**

*Director of the Federal Register.*

[FR Doc. 2013–23713 Filed 9–27–13; 8:45 am]

BILLING CODE 1505–02–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

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

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA requires this information collection to comply with the Depository Institution Management Interlocks Act (Interlocks Act) and to determine federally insured credit unions' compliance with NCUA's Management Official Interlocks regulation at 12 CFR Part 711.

**DATES:** Comments will be accepted until October 30, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

*NCUA Contact:* Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

*OMB Contact:* Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444. For information about the Interlocks Act and NCUA's regulation at Part 711, please contact NCUA's Office of General Counsel at (703) 518–6540 or *ogcmail@ncua.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract and Request for Comments

NCUA is reinstating its OMB collection number 3133–0152 for its Management Official Interlocks regulation, 12 CFR Part 711, which implements the Interlocks Act for federally insured credit unions. The Interlocks Act generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies. 12 U.S.C. 3201–3208. For credit unions, the Interlocks Act restricts interlocks between credit unions and other types of financial institutions, not between two or more credit unions. 12 U.S.C. 3204(3). NCUA last substantively revised 12 CFR Part 711 in 1999, as part of a coordinated interagency effort with other federal financial regulatory agencies. 64 FR 66356–66360, Nov. 26, 1999.

NCUA finds information collection burdens associated with this regulation still apply and is reinstating this OMB collection number 3133–0152. The information collections associated with Part 711 are as follows.

- Under 711.3, a credit union may have to maintain records to determine whether the major assets prohibition applies.
- Under 711.4(h)(1)(i), a credit union must notify NCUA to obtain approval to have a director in common with a diversified savings and loan holding company.
- Under 711.5, a credit union may have to maintain records to comply with the small market share exemption.
- Under 711.6(a), a credit union seeking a general exemption to a management official interlocks prohibition in 711.3 would have to compile information and submit an application to NCUA for approval.

The NCUA requests that you send your comments on this collection to the location(s) listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

### II. Data

*Title:* Management Official Interlocks, 12 CFR Part 711.

*OMB Number:* 3133–0152.

*Form Number:* None.

*Type of Review:* Reinstatement, with change, of a previously approved collection.

*Description:* NCUA's management official interlocks regulation at 12 CFR Part 711 directs federally insured credit unions having a common management official with another type financial institution to compile and maintain records and, in some cases, submit an application to NCUA for a general exemption to certain prohibitions, or otherwise obtain NCUA approval.

*Respondents:* All federally insured credit unions.

*Estimated No. of Respondents/ Recordkeepers:* 2.

*Estimated Burden Hours per Response:* 3 hours.

*Frequency of Response:* Recordkeeping; upon application and reporting.

*Estimated Total Annual Burden Hours:* 6.

*Estimated Total Annual Cost:* $0.

By the National Credit Union Administration Board on September 25, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2013–23803 Filed 9–27–13; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

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

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is not from any new requirements. It is a reinstatement of a prior collection related to NCUA's leasing rule. The rule requires a federal credit union engaged in leasing to obtain or have on file financial documentation demonstrating that the guarantor of an estimated residual value can meet the guarantee. This information collection is being published to obtain comments from the public.

**DATES:** Comments will be accepted until October 30, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

*NCUA Contact:* Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

*OMB Contact:* Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract and request for comments

NCUA is amending and reinstating the collection for 3133–0151 for NCUA's leasing regulation. 12 CFR part 714. In a leasing situation, the NCUA requires the financially responsible party to guarantee the excess when the residual value of a lease will exceed 25% of the original cost of the leased property. 12 CFR 714.5. The guarantor may be the manufacturer or an insurance company.

The federal credit union must obtain and have on file financial documentation demonstrating that the guarantor has the resources to meet the guarantee. If a manufacturer is involved, the federal credit union must review financial statements for the period that would establish a reasonable financial trend. If an insurance company is involved, it must have a major company rating of at least a B+. The federal credit union will use the information as part of the risk assessment process to analyze and evaluate the financial capabilities and resources of a party that guarantees the residual value used in a leasing arrangement.

There are currently 35 federal credit unions offering leases. Most leases are offered with residual payments of less than 25% of the original leased property value. Therefore, there are a limited number of leases requiring a guarantee. This is estimated to be 5 transactions per year for federal credit unions offering leases. The hourly burden per transaction is approximately 2 hours. Completing the financial review requires a combination of clerical and officer time which is estimated to be a blended hourly rate of $60. Therefore, the estimated annual hourly burden for federal credit unions offering leases is 350 hours, at an hourly cost of $60 resulting in an estimated annual financial burden of $21,000. The burden is minimal and offset by the additional benefit of mitigating and reducing the potential for losses to the credit union.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

### II. Data

*Title:* Leasing—Statistical Documentation Required for a Guarantor of a Residual Value, 12 CFR Part 714.

*OMB Number:* 3133–0151.

*Form Number:* None.

*Type of Review:* Reinstatement, with change, of a previously approved collection.

*Description:* Part 714 of NCUA's Rules and Regulations directs federal credit unions to evaluate whether a guarantor of a residual value has the financial resources to meet the guarantee.

*Respondents:* All federal credit unions.

*Estimated No. of Respondents/ Recordkeepers:* 35.

*Estimated Burden Hours Per Response:* 2 hours

*Estimated Frequency of Response:* 5 annually for each respondent/ recordkeeper.

*Estimated Total Annual Burden Hours:* 350.

*Estimated Total Annual Cost:* $21,000.

By the National Credit Union Administration Board on September 25, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2013–23806 Filed 9–27–13; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

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

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is related to NCUA's Chartering and Field of Membership Manual (Chartering Manual) and is being published to obtain comments from the public. The Chartering Manual establishes requirements for organizing and amending a federal credit union (FCU) charter and field of membership (FOM).

**DATES:** Comments will be accepted until October 30, 2013.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and OMB Reviewer listed below:

*NCUA Contact:* Tracy Crews, National Credit Union Administration, 1775 Duke Street Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOPRA@ncua.gov.*

*OMB Contact:* Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444. Requests for additional information about the Chartering Manual should be directed to Susan Ryan, NCUA Consumer Access Analyst, at the same address, in the NCUA Office of Consumer Protection, Division of Consumer Access, (703) 518–1150, *DCAMail@NCUA.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract and Request for Comments

The FCU Act establishes the rules for FCU chartering and field of membership. 12 U.S.C. 1753(5), 1754, 1759. The NCUA Board, after consideration of public comment, incorporated the Chartering Manual into NCUA's regulations at 12 CFR 701.1, and Appendix B to part 701, in 2008. 73 FR 73392, Dec. 2, 2008. NCUA most recently issued for public comment and amended the Chartering Manual in 2013. 78 FR 13460, Feb. 28, 2013.

NCUA is issuing this notice and request for comment on the reinstatement and amendment of the previously approved information collection related to the Chartering Manual, 3133–0015. Staff has incorporated into this collection other previously proposed, expired or combined information collections also related to the Chartering Manual, including 3133–0116 and 3133–0178. The collections are not new and the estimated amount of burden hours is based on NCUA's experience with this regulation and the current number of CUs. The amount is generally decreasing as a result of technology and the continuing trend of annual decreases in the number of CUs.

NCUA staff reviewed each of the four chapters and appendices of the Chartering Manual to identify all current information collection requirements. The four chapters are: FCU Chartering; Field of Membership Requirements for FCUs; Low-Income CUs and CUs Serving Underserved Areas; and Charter Conversions; as well as related appendices. NCUA uses the information it collects pursuant to the Chartering Manual to regulate CUs' compliance with the FCU Act and NCUA regulations and to protect the safety and soundness of CUs and the National Credit Union Share Insurance Fund.

As a preliminary matter, those persons choosing to organize a new FCU must comply with certain information collection requirements upon starting the FCU outlined in this Chartering Manual. Over the past three years, organizers have established an average of approximately two new FCUs each year. We estimate each new FCU must spend approximately 160 hours to initially comply with the Chartering Manual's information collection requirements (ICR), for a total annual collection of 320 hours.

For current FCUs, NCUA staff also reviewed each chapter and appendices to the Chartering Manual to estimate current annual burden hours for CUs attached to each ICR. We have listed these estimates below in the Data section.

NCUA does not believe that CUs will incur any additional labor costs as a result of the Chartering Manual requirements since these are in accordance with the CUs' usual and customary business practices. The Chartering Manual addresses integral parts of a CU's operation as a member-owned, not-for-profit financial cooperative. Since a CU could not operate as a chartered and insured credit union without complying with these collections, there is no additional labor cost burden.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of any methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review.

### II. Data

*Title:* NCUA Chartering and Field of Membership Manual, 12 CFR 701.1, and App. B to Part 701.

*OMB Number:* 3133–0015.

*Form Numbers:* NCUA Forms 4000, 4001, 4008, 4012, 4015, 4015–EZ, 4221, 4401, 4505, 4506, 9500, 9501, 9600.

*Type of Review:* Reinstatement, with change.

*Description:* The NCUA Chartering and Field of Membership Manual sets forth the NCUA's current policies and procedures for granting and permitting change to a federal credit union charter.

*Estimated No. of Respondents/Recordkeepers:* 9,990.

*Frequency of Response:* Recordkeeping, Reporting and On occasion.

*Estimated Total Annual Hours Requested:* 15,397.5.

*Estimated Total Annual Cost:* N/A.

Specifically, NCUA Staff identified the following chapters and appendices as containing ICRs with the following number of respondents and the estimated annual burden in hours, as follows:

Chapter 1. FCU Chartering

*ICRs:* Business Plan for New Charters, Wording for Proposed FOM, NCUA Forms 4001, 4008, 4012, 9500, 9501.

*Respondents/record-keepers:* 2 per year.

*Estimated annual burden:* 160 hours.

*Total annual hours:* 320 hours

ICRs related to the Chartering Manual for All FCUs:

Chapter 2. Field of Membership Requirements for FCUs

*ICR:* Single Common Bond and Multiple Common Bond Amendments, NCUA Forms 4015 and 4015–EZ, and FOM Internet Application.

*Respondents:* 9,915.

*Estimated annual burden:* 30 minutes.

*Total annual hours:* 4,957.5.

*ICR:* Community Charter Conversion and Expansion Applications.

*Respondents:* 39.

*Estimated annual burden:* 160 hours.

*Total annual hours:* 6,240.

Chapter 3. Low-Income CUs and CUs Serving Underserved Areas

*ICR:* Application to Add an Underserved Area.

*Respondents:* 21.

*Estimated annual burden:* 160 hours.

*Total annual hours:* 3,360.

Chapter 4. Charter Conversions

*ICR:* NCUA Forms 4000, 4221, 4401, 4505, 4506, 9500, 9501, 9600.

*Respondents/record-keepers:* 13.

*Estimated annual burden:* 40 hours.

*Total annual hours:* 520.

By the National Credit Union Administration Board on September 25, 2013.

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2013–23802 Filed 9–27–13; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Arts Advisory Panel Meeting

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and Humanities.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 as follows (ending time is approximate):

*Opera* (application review): This meeting will be closed.

*Dates:* October 31, 2012. 10:00 a.m. to 4:00 p.m. Eastern Time.

**FOR FURTHER INFORMATION CONTACT:** Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202–682–5691.

**SUPPLEMENTARY INFORMATION:** The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: September 25, 2013.

**Kathy Plowitz-Worden,**

*Panel Coordinator, National Endowment for the Arts.*

[FR Doc. 2013–23724 Filed 9–27–13; 8:45 am]

**BILLING CODE 7537–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB Review; Comment Request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 77 FR 48553, and one comment was received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission (including comments) may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

*Comments:* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions f 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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

**DATES:** 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 703–292–7556.

NSF 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.

**SUPPLEMENTARY INFORMATION:**

*Comments:* As required by 5 CFR 1320.8(d), comments on the information collection activities as part of this study were solicited through publication of a 60-Day Notice in the **Federal Register** on August 14, 2012, at 77 FR 48553. We received one comment, to which we here respond.

*Commenter:* The Center for Equal Opportunity provided the following comment:

We have a comment on this sentence in yesterday's **Federal Register** notice (77 FR 48553, August 14, 2012, NSF ''Notice of Intent To Seek Approval To Establish an Information Collection''): ''From this knowledge, a benchmark for progress towards creating a path of equity in engineering for women, and especially for racial/ethnic minorities and persons with disabilities can be established starting with the culture of the centers.''

Since the aim is a workplace environment that is welcoming, inclusive, and nondiscriminatory toward all, we suggest this sentence be rewritten as follows in this and future **Federal Register** notices of this kind: ''From this knowledge, a benchmark for progress towards creating a path of

equity in engineering for women and men, and for all racial/ethnic groups and persons with disabilities, can be established starting with the culture of the centers.''

Not only is the wording more in keeping with the principles of inclusion and nondiscrimination, but it is generally illegal for the government to show favoritism or even use classifications based on race, ethnicity, or sex. See *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200, 227 (1995) (''all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny''); *Mississippi University for Women* v. *Hogan,* 458 U.S. 718 (1982) (gender classifications require an ''exceedingly persuasive justification''). See also Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000d (prohibiting discrimination on the basis of race, color, and national origin in federally funded programs). Indeed, such classifications and favoritism are ''presumptively invalid'' (see *Personnel Administrator* v. *Feeney,* 442 U.S. 256 (1979)). The wording we suggest is in line with that used by many other federal agencies in their **Federal Register** notices. See, for example, 76 FR 13422 (DHS), 77 FR 27013 (USDA), 77 FR 24268 (DoTreasury), 75 FR 78705 (HHS), 76 FR 8366 (EPA), 77 FR 15745 (DoEnergy), 77 FR 35063 (DoL), etc.

*Response:* In response to the comment, the Need and Use of Information Collection section was modified to:

The NSF Engineering Research Centers (ERCs) were established in 1985 with one of the goals being the development of a diverse, globally competitive engineering workforce. The ERCs provide information regarding diversity in the Centers through 10-year diversity strategic plans and annual reporting that includes demographic data. However, beyond the numbers, NSF does not have a good understanding of the culture for diversity inside these centers and how it impacts faculty, students and their success. This information will enable NSF to have an unprecedented perspective of the ERC diversity culture. From this knowledge, a benchmark for progress towards creating a path of equity in engineering for women and men, all racial/ethnic groups and persons with disabilities, can be established starting with the culture of the centers. Also, with a better understanding of the diversity efforts and diversity culture within the ERCs, the information will enable us to assess, refine, and improve diversity efforts. We want the ERCs to be inclusive environments for all. This diversity climate survey will enable us to evaluate how close we are to that goal.

For outside technical expertise, NSF has consulted with the Center for Biorenewable Chemicals (CBiRC) and the Computer Integrated Surgical Systems and Technology (CISST) Engineering Research Centers that have executed similar diversity surveys across their member institutions. These centers had success in developing a survey with content specifically designed to address the experiences unique to ERC personnel. The education, outreach and diversity staff within these specific ERCs have been available for consultation in the developmental process of the survey.

After consideration of this comment, we are moving forward with our submission to OMB.

*Title of Collection:* Engineering Research Center's Diversity Climate Survey.

*OMB Number:* 3145–NEW.

*Type of Request:* Intent to seek approval to establish an information collection.

**Abstract**

*Proposed Project:* We would like to use Survey Monkey to administer a diversity climate survey to the 17, active NSF Engineering Research Centers. This survey will have a mix of rating and open-ended questions. Our goal is to gain an understanding of the climate of diversity within the ERCs.

*Need and Use of Information Collection:* The NSF ERCs were established in 1985 with one of the goals being the development of a diverse, globally competitive engineering workforce. The ERCs provide information regarding diversity in the Centers through 10-year diversity strategic plans and annual reporting that includes demographic data. However, beyond the numbers, NSF does not have a good understanding of the culture for diversity inside these centers and how it impacts faculty, students and their success. This information will enable NSF to have an unprecedented perspective of ERC diversity culture. From this knowledge, a benchmark for progress towards creating a path of equity in engineering for women, and especially for racial/ethnic minorities and persons with disabilities can be established starting with the culture of the centers. Also, with a better understanding of the diversity efforts and diversity culture within the ERCs, the information will enable us to assess, refine, and improve diversity efforts. We want the ERCs to be inclusive environments for all. This diversity climate survey will enable us to evaluate how close we are to that goal.

*Estimate of the Burden:* This survey will have 1,418 respondents and should take no more than 30 minutes to complete. This yields a burden time of 709 hours.

*Respondents:* Individuals; not-for-profit institutions

*Estimated Number of Responses per Survey:* One

Dated:September 25, 2013.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2013–23769 Filed 9–27–13; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Adrian Dahood, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

**SUPPLEMENTARY INFORMATION:** On August 22, 2013 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on September 25, 2013 to: Jennifer Martin, Permit No. 2014–008.

**Nadene G. Kennedy,**

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2013–23718 Filed 9–27–13; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0108]**

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Budget and Management (OMB) review of

information collection and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on June 6, 2013 (78 FR 34134).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* The Office of Federal and State Materials and Environmental Management Programs Requests to Agreement States for Information.

3. *Current OMB approval number:* 3150–0029.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* One time or as needed.

6. *Who will be required or asked to report:* Thirty-Seven Agreement States who have signed Section 274(b) Agreements with the NRC.

7. *An estimate of the number of annual responses:* 738.

8. *The estimated number of annual respondents:* 37.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,690.

10. *Abstract:* The Agreement States are asked on a one-time or as-needed basis to respond to a specific incident, to gather information on licensing and inspection practices or other technical and training-related information. In 2007, the NRC policy changed to begin funding training for Agreement State materials licensing and inspection staff and associated travel to attend courses offered through the NRC training program. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by the NRC in preparing responses to Congressional inquiries.

The Agreement State comments are also solicited in the areas of proposed procedures, implementing guidance, and in the development of new and revised regulations and policies.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20874. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 30, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0029), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 24th day of September, 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–23661 Filed 9–27–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0213]**

## Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for a new information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Voluntary Reporting of Planned Licensing Request Submittals.

2. *Current OMB approval number:* 3150–XXXX.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* All operating power reactors whose licensing actions are handled by the Office of Nuclear Reactor Regulation, Division of Operating Reactor Licensing.

5. *The number of annual respondents:* 62.

6. *The number of hours needed annually to complete the requirement or request:* 310.

7. *Abstract:* The NRC is seeking information on the licensing actions that licensees plan to submit over the next three years. The information would be used by the Office of Nuclear Reactor Regulation to better plan its resource utilization. Specifically, the office would use the information to (1) inform its budget development, (2) identify potential impacts from multiple actions utilizing the same resources, (3) develop solutions, if possible, to resource conflicts, and (4) communicate scheduling impacts to stakeholders.

Submit, by November 29, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should

reference Docket No. NRC–2013–0213. You may submit your comments by any of the following methods. Electronic comments go to: *http://www.regulations.gov* and search for Docket No. NRC–2013–0213. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 24th day of September 2013.

For the Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–23662 Filed 9–27–13; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0225]**

## Proposed Revision to Physical Security—Standard Design Certification and Operating Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan-draft section revision; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comments on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' LWR Edition: Section 13.6.2 ''Physical Security—Standard Design Certification and Operating Reactors.'' The NRC seeks comments on the proposed revised section of the Standard Review Plan (SRP), concerning the physical security reviews of design certification applications.

**DATES:** Comments must be filed no later than October 30, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0225. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3442; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Wesley Held, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1583 or email: *Wesley.Held@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2013–0225 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0225.
- *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 numbers for the current revision and the proposed revision are available in ADAMS under Accession Nos.: Section 13.6.2, Proposed Revision 2 (ML13010A109) and Current Revision 1 (ML102510273).
- *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, MD 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2013–0225 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Further Information

The NRC seeks public comment on the proposed revised section of the SRP. This SRP section has been developed to assist NRC staff with the physical security review of applications for design certifications, incorporate licensing experience from previous design certification application reviews, and to inform applicants and other affected entities of proposed SRP guidance regarding an acceptable method by which to evaluate the affected portions of applications with respect to the requirements of Part 73 of Title 10 of the *Code of Federal Regulation*s (10 CFR).

Following NRC staff evaluation of public comments, the NRC intends to incorporate the final approved guidance into the next revision of NUREG–0800. The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

Dated at Rockville, Maryland, this 19th day of September 2013.

For the Nuclear Regulatory Commission.

**Joseph Colaccino,**

*Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.*

[FR Doc. 2013–23756 Filed 9–27–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0268]**

## Revisions to Radiation Protection

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan section; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing final revisions to the following sections of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition'': Section 12.1, ''Assuring that Occupational Radiation Exposures Are As Low As Is Reasonably Achievable,'' Section 12.2, ''Radiation Sources,'' Section 12.3 -12.4, ''Radiation Protection Design Features,'' and Section 12.5, ''Operational Radiation Protection Program.''

**DATES:** The effective date of this Standard Review Plan update is October 30, 2013.

**ADDRESSES:** Please refer to Docket ID NRC–2012–0268 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0268. 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 notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision for Section 12.1, ''Assuring that Occupational Radiation Exposures are as Low as is Reasonably Achievable,'' (is available in ADAMS under Accession No. ML13151A061); Section 12.2, ''Radiation Sources,'' (ADAMS Accession No. ML13151A413); Section 12.3–12.4, ''Radiation Protection Design Features,'' (ADAMS Accession No. ML13151A475); and Section 12.5, ''Operational Radiation Protection Program,'' (ADAMS Accession No. ML13155A232). The staff also prepared redline versions of these Chapter 12 sections showing the differences between the proposed and the final SRP sections for Section 12.1 (ADAMS Accession No. ML13151A162), Section 12.2, (ADAMS Accession No ML13151A453), Section 12.3—12.4, (ADAMS Accession No ML13151A477) and Section 12.5, (ADAMS Accession No ML12186A512).
- *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.
- The NRC posts its issued staff guidance on the NRC's external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*).

**FOR FURTHER INFORMATION CONTACT:** Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6992, email: *mailto:Jonathan.DeGange@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The changes to this final SRP Chapter reflect the current NRC staff review methods and practices based on lessons learned from NRC reviews of design certification (DC) and combined license (COL) applications completed since the last revision of this chapter in March 2007. Changes include: (1) Adding guidance to the staff for evaluating the acceptability of the radiation protection program, including the applicant's use of generic radiation protection and groundwater program templates, (2) providing additional guidance for review of existing regulatory requirements related to the material covered in Chapter 12 of the SRP, (3) updating the review interfaces to improve the efficiency and consistency of staff reviews, and (4) updating references covered in SRP Chapter 12.

On November 6, 2012 (77 FR 66650), the NRC published for public comment the proposed revisions to four sections in Chapter 12, ''Radiation Protection.'' Comments were received on the proposed revision. The staff made changes to the proposed revision after consideration of the comments. A summary of the comments and the staff's disposition of the comments are available in a separate document, *Response to Public Comments on Draft Standard Review Plan (SRP) Chapter 12, ''Radiation Protection''* (ADAMS Accession No. ML13150A042).

Additionally, the NRC staff will incorporate the positions reflected in these revisions of SRP Sections in Chapter 12 into the next revision of Regulatory Guide 1.206, ''Combined License Applications for Nuclear Power Plants'' (ADAMS Accession No. ML070720184).

### Backfitting and Issue Finality

Issuance of this final SRP section does not constitute backfitting as defined in § 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The staff's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities*

The SRP provides guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power reactor license applicants or holders are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on current licensees and regulatory approvals either now or in the future*

The staff does not intend to impose or apply the positions described in the SRP to existing (already issued) licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here –protect current or future applicants*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or

any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

**Congressional Review Act**

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 19th day of September 2013.

For the Nuclear Regulatory Commission.

**Joseph Colaccino,**

*Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.*

[FR Doc. 2013–23758 Filed 9–27–13; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: OPM Form 1203–FX, Occupational Questionnaire, 3206–0040

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 30-Day Notice and request for comments.

**SUMMARY:** The Automated Services Management Group, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0040, Occupational Questionnaire, OPM Form 1203–FX. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 20, 2013 at Volume 78 FR 37245 allowing for a 60-day public comment period. We did not receive any comments. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of the OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until October 30, 2013. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** The Occupational Questionnaire is an optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create applicant records for an automated examining system. The 1203 series was commonly referred to as the ''Qualifications and Availability Form C.'' OPM has re-titled the series as ''Occupational Questionnaire'' to fit a more generic need. OPM uses this form to carry out its responsibility for open competitive examining for admission to the competitive service in accordance with section 3304, of title 5, United States Code. One change has been made to the form under *Section 14, Veterans' Preference.* The addition of *Sole Survivorship Preference* was added to reflect the amended eligibility categories for veterans' preference per Public Law 110–317, the Hubbard Act. Subparagraph (H) established the new category for veterans released or discharged from a period of active duty from the armed forces, after August 29, 2008, by reason of a ''sole survivorship discharge.''

**Analysis**

*Agency:* Automated Systems Management Group, Office of Personnel Management.

*Title:* Occupational Questionnaire, OPM Form 1203–FX.

*OMB Number:* 3260–0040.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Number of Respondents:* 10,286,701.

*Estimated Time per Respondent:* 45 minutes.

*Total Burden Hours:* 7,715,026.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintaining):* $200,000.

U.S. Office of Personnel Management.

**Elaine Kaplan,**

*Acting Director.*

[FR Doc. 2013–23836 Filed 9–27–13; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Information Collection 3206–NEW; Questionnaire for Non-Sensitive Positions, Standard Form 85 (SF 85)

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 30-Day Notice and request for comments.

**SUMMARY:** Federal Investigative Services (FIS), U. S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR),

Office of Management and Budget (OMB) Control No. 3206–NEW, for Questionnaire for Non-Sensitive Positions, Standard Form 85 (SF 85). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until October 30, 2013. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, Washington, DC 20503, Attention: Jasmeet K. Seehra, OMB Desk Officer or sent by email to *oira_submission@omb.eop.gov* or faxed to (202)395–6974; and Federal Investigative Services, U. S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Donna McLeod or sent by email to *FISFormsComments@opm.gov.*

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U. S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Donna McLeod or sent by email to *FISFormsComments@opm.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces that OPM is submitting to OMB a request for review and clearance of the revised collection of information, Questionnaire for Non-Sensitive Positions, SF 85, which is housed in a system named e-QIP (Electronic Questionnaires for Investigative Processing) and is an information collection completed by applicants for, or incumbents of, Federal Government civilian or military positions, or positions in private entities performing work for the Federal Government under contract. The collection is used as the basis of information:

- By the Federal Government in conducting background investigations of persons under consideration for non-sensitive, low-risk positions as defined in Executive Order 10450 and 5 CFR part 731;
- by agencies in determining whether a person performing work for or on behalf of the Federal Government under a contract should be deemed eligible for logical or physical access or fit to perform the work anticipated, if the contract provides for such an adjudication.

The SF 85 is completed by civilian employees of the Federal Government, military personnel, and non-federal employees, including Federal contractors and individuals otherwise not directly employed by the Federal Government but who perform work for or on behalf of the Federal Government. It is estimated that 55,040 non-Federal individuals will complete the SF 85 annually for investigations conducted by OPM. The SF 85 takes approximately 30 minutes to complete. The estimated annual burden for this form when used in OPM investigations is 27,520 hours.

This ICR also requests categorizing the form as a common form. OPM will continue to estimate the burden based on all Federal agencies that submit the SF 85 to OPM for investigation. Once OMB approves the use of this common form, all Federal agencies using the form not in connection with an OPM investigation may request use of this common form without additional 60- or 30-day notice and comment requirements. At that point, each agency will account for its number of respondents and the burden associated with the agency's use.

The 60-day notice of the proposed information collection was published in the **Federal Register** on July 18, 2013 (**Federal Register** Notices/Volume 78, Number 138, page 42982–42983) as required by 5 CFR 1320, affording the public an opportunity to comment on the form. A commenter from OPM recommend changing information collected in Section 7, Citizenship, to mirror the collection found on the SF 86. This recommendation was not accepted at this time. OPM will need additional time to explore the feasibility of addressing this recommendation in a timely manner and comply with investigative coverage requirements.

U.S. Office of Personnel Management.

**Elaine Kaplan,**

*Acting Director.*

[FR Doc. 2013–23833 Filed 9–27–13; 8:45 am]

**BILLING CODE 6325–53–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Information Collection 3206–NEW; Standard Form 86 Certification (SF 86C)

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** Federal Investigative Services (FIS), U. S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–NEW, for Standard Form 86 Certification (SF 86C). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of OPM, including whether the information will have practical utility;
2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until October 30, 2013. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, Washington, DC 20503, Attention: Jasmeet K. Seehra, OMB Desk Officer or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974; and Federal Investigative Services, U. S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, Attention: Donna McLeod or sent by email to *FISFormsComments@opm.gov.*

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U. S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Donna McLeod or sent by email to *FISFormsComments@opm.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces that OPM is submitting to OMB a request for review and clearance of the revised collection of information, Standard Form 86 Certification (SF 86C). The SF 86C is an information collection completed by applicants for, or incumbents of, Federal Government civilian or military positions, or positions in private entities performing work for the Federal Government under contract. The collection is used as the basis of information:

- By the Federal Government in conducting background investigations, reinvestigations, and continuous evaluations, as appropriate, of persons under consideration for or retention in national security sensitive positions as defined in Executive Order 10450 and 5 CFR part 732, and for positions requiring eligibility for access to classified information under Executive Order 12968;
- by agencies in determining whether a person performing work for or on behalf of the Federal Government under a contract should be deemed eligible for logical or physical access when the nature of the work is sensitive and could bring about a material adverse effect on national security.

The SF 86C is completed by civilian employees of the Federal Government, military personnel, and non-federal employees, including Federal contractors and individuals otherwise not directly employed by the Federal Government but who perform work for or on behalf of the Federal Government. Numerous situations exist that require an individual to complete a new SF 86 for the sole purpose of determining if any information on the previously executed SF 86 has changed. The SF 86C is used in lieu of a new SF 86 to permit the individual to indicate that no data changes occurred, or to provide new or changed information. The SF 86C is a certification document that permits the reporting of changes on previously reported SF 86 information. Individual agencies maintain the form.

It is estimated that no non-Federal individuals will complete the SF 86C annually for investigations conducted by OPM. The SF 86C is not used as the basis for any investigations conducted by OPM. The SF 86C takes approximately 15 minutes to complete. The estimated annual burden for this form when used in OPM investigations is zero hours.

OPM solicits comments to determine the utility of this collection. If the form no longer meets the intended purpose, OPM recommends abolishing the form.

This ICR also requests categorizing this form as a common form. Once OMB approves the use of this common form, all Federal agencies using the form not in connection with an OPM investigation may request use of this common form without additional 60- or 30-day notice and comment requirements. At that point, each agency will account for its number of respondents and the burden associated with the agency's use.

The 60-day notice of the proposed information collection was published in the **Federal Register** on July 29, 2013 (**Federal Register** Notices/Volume 78, Number 145, page 45579–45580), as required by 5 CFR 1320, affording the public an opportunity to comment on the form. No comments were received.

U.S. Office of Personnel Management.

**Elaine Kaplan,**

*Acting Director.*

[FR Doc. 2013–23835 Filed 9–27–13; 8:45 am]

BILLING CODE 6325–53–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–30700; File No. 812–14108]**

## Variable Insurance Trust, *et al.;* Notice of Application

September 24, 2013.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an exemption pursuant to Section 6(c) of the Investment Company Act of 1940, as amended (the ''Act''), seeking exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

**APPLICANTS:** Variable Insurance Trust (the ''Fund'') and MFund Services LLC (''MFund'') (collectively, ''Applicants'').

**SUMMARY:** *Summary of Application:* Applicants request an order pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder in cases where a life insurance company separate account supporting variable life insurance contracts (''VLI Accounts'') holds shares of an existing portfolio of the Fund or any other ''Insurance Fund,'' as defined below (collectively, the ''Insurance Funds''), and one or more of the following other types of investors also hold shares of the Insurance Funds: (i) Separate accounts registered as investment companies or separate accounts that are not registered as investment companies under the Act pursuant to exemptions from registration under Section 3(c) of the Act that fund variable annuity contracts (''VA Accounts'') and VLI Accounts (VA Accounts and VLI Accounts together ''Separate Accounts'') issued by both affiliated life insurance companies and unaffiliated life insurance companies (''Participating Insurance Companies''); (ii) trustees of qualified group pension or group retirement plans (''Qualified Plans'') outside the Separate Account context; (iii) investment adviser(s) or affiliated person(s) of the investment adviser(s) to a series of an Insurance Fund (the ''Adviser''), for the purpose of providing seed capital to a series of an Insurance Fund; and (iv) any general account of an insurance company depositor of VA Accounts and/or VLI Accounts (''General Accounts''). An Insurance Fund is any investment company (or investment portfolio or series thereof), including an existing portfolio of the Fund, designed to be sold to VA Accounts and/or VLI Accounts and to which an Applicant or its affiliates serve or may serve in the future as investment advisers, investment subadvisers, investment managers, administrators, principal underwriters or sponsors.

**DATES:** *Filing Date:* The application was filed on January 7, 2013, and amended and restated on July 23, 2013.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or

by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2013, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Jerry Szilagyi, MFund Services LLC, 22 High Street, Huntington, NY 11743 and Jerry Szilagyi, Variable Insurance Trust, 5 Abbington Drive, Lloyd Harbor, NY 11743. Copy to JoAnn Strasser, Esq., Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, OH 43215.

**FOR FURTHER INFORMATION CONTACT:** Mark Cowan, Senior Counsel, or Michael Kosoff, Branch Chief, Insured Investments Office, Division of Investment Management at (202) 551–6795.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search.htm*, or by calling (202) 551–8090.

## Applicants' Representations

1. The Fund is registered under the Act as an open-end management investment company (File No. 811–22512) and is currently comprised of four portfolios, one of which, the Vice Fund Portfolio, is registered under the Securities Act of 1933 on Form N–1A. The Fund may establish additional portfolios and classes of shares of each portfolio in the future. Shares of the Fund will not be offered to the general public.

2. MFund provides management and administrative services to the Fund and other portfolios, subject to the supervision of the applicable Board.

3. The Fund proposes, and other Insurance Funds may in the future, offer and sell Shares to Separate Accounts of various Participating Insurance Companies as an investment medium to support variable life contracts (''VLI Contracts'') and variable annuity contracts (''VA Contracts'') (collectively, ''Variable Contracts'') issued through such Separate Accounts. Each Separate Account is, or will be, established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of the insurance company's state of domicile. If a Separate Account is registered as an investment company under the Act, or is exempt from such registration under Section 3(c) of the Act, it will be a ''separate account'' as defined in Rule 0–1(e) (or any successor rule) under the Act. For purposes of the Act, the Participating Insurance Company that establishes such a Separate Account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts. Each Participating Insurance Company may rely on Rule 6e–2 or Rule 6e– 3(T) under the Act.

4. The Insurance Funds will sell shares to Separate Accounts only if each Participating Insurance Company sponsoring a Separate Account enters into a participation agreement (a ''Participation Agreement'') with such Insurance Fund. The Participation Agreement will govern participation by the Participating Insurance Company in such Insurance Fund and will memorialize, among other matters, the fact that the Participating Insurance Company will remain responsible for establishing and maintaining any Separate Account covered by the Participation Agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of Variable Contracts issued through such accounts. The role of the Insurance Funds under this arrangement insofar as federal securities laws are applicable, will consist of offering shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the requested order.

5. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same Participating Insurance Company, or of two or more insurance companies that that are affiliated persons of each other, is referred to as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of the two or more Participating Insurance Companies that are not affiliated persons of each other, is referred to as ''shared funding.''

6. Applicants propose that the Insurance Funds also be permitted to offer and/or sell Shares directly to Qualified Plans and to the Insurance Fund's Adviser or General Account of Participating Insurance Companies.

8. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts, VA Accounts, investment advisers, a General Account and Qualified Plans is referred to herein as ''extended mixed funding.''

## Applicants' Legal Analysis

1. Section 9(a)(2) of the Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any investment company, including a unit investment trust, if an affiliated person of that company is subject to disqualification enumerated in Section 9(a)(1) or (2) of the Act. Sections 13(a), 15(a), and 15(b) of the Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares.

2. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act provide partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting certain VLI Contracts and to their life insurance company depositors under limited circumstances, as described in the application. VLI Accounts, their depositors and their principal underwriters may not rely on the exemptions provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) if shares of the Fund are held by a VLI Account through which certain VLI Contracts are issued, a VLI Account of an unaffiliated Participating Insurance Company, an unaffiliated Adviser, any VA Account, a Qualified Plan or a General Account. Accordingly, Applicants request an order of the Commission granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, in cases where VLI Account holds Shares of an Insurance Fund and one or more of the following types of investors also hold such Shares: (i) VA Accounts and VLI Accounts issued by both affiliated and unaffiliated Participating Insurance Companies; (ii) Qualified Plans; (iii) a portfolio's Adviser for the purpose of providing seed capital to a portfolio; and (iv) General Accounts.

3. Applicants maintain that there is no policy reason for the sale of Shares to Qualified Plans, Advisers and General Accounts to prohibit or otherwise limit a VLI Account and its Participating Insurance Company depositor from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) just because Shares are held

by Qualified Plans, Advisers or General Accounts. Notwithstanding, Rule 6e–2 and Rule 6e–3(T) each specifically provide that the relief granted thereunder is available only where shares of the underlying fund are offered *exclusively* to insurance company separate accounts. In this regard, Applicants request exemptive relief to the extent necessary to permit Shares to be sold to Qualified Plans, Advisers and General Accounts while allowing Participating Insurance Companies and their VA Accounts and VLI Accounts to enjoy the benefits of the relief granted under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15). Applicants note that if the Insurance Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

4. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding Participating Insurance Companies from the exemptive relief requested because the Insurance Funds also may sell their Shares to Qualified Plans, Advisers and General Accounts. Rather, Applicants assert that the proposed sale of Shares to these purchasers, in fact, may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

5. Applicants have concluded, as explained in more detail below, that investment by Qualified Plans, Advisers and General Accounts in the Insurance Funds should not increase the risk of material irreconcilable conflicts between owners of VLI Contracts and other types of investors or between owners of VLI Contracts issued by unaffiliated Participating Insurance Companies.

6. Consistent with the Commission's authority under Section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request exemptions for a class consisting of VLI Accounts investing in shares of existing and future portfolios of Insurance Funds, their Participating Insurance Company depositors and their principal underwriters that currently invest in or in the future will invest in the Fund.

7. Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or class or classes of any person, security or transaction from any provision or provisions of the Act, or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The Applicants submit that the exemptions requested are appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

8. Section 9(a)(3) of the Act provides, among other things, that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed funding, extended mixed funding and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying investment company.

9. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act provide exemptions from pass-through voting requirements with respect to several significant matters, assuming the limitations on mixed funding, extended mixed funding and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its variable life insurance contract owners with respect to the investments of an underlying investment company, or any contract between such an investment company and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and(b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)).

10. The Applicants represent that the sale of Shares to Qualified Plans, the Adviser or General Account will not have any impact on the exemptions requested herein regarding the disregard of pass-through voting rights. Shares sold to Qualified Plans will be held by such Plans, not insurance companies. The exercise of voting rights by Qualified Plans, whether by trustees, other fiduciaries, participants, beneficiaries, or investment managers engaged by the Qualified Plans, does not raise the type of issues respecting disregard of voting rights that are raised by VLI Accounts. With respect to Qualified Plans, which are not registered as investment companies under the Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons as discussed in the application.

11. Similarly, the Adviser to an Insurance Fund and the General Accounts of Participating Insurance Companies are not subject to any pass-through voting requirements. Accordingly, unlike the circumstances surrounding VLI Account and VA Account investments in portfolio shares, Applicants represent that investment in such shares by Qualified Plans would not raise issues respecting resolution of material irreconcilable conflicts of interest with respect to voting. Consequently, the Funds may not sell their shares to the public.

12. Applicants assert that the rights of an insurance company on its own initiative or on instructions from a state insurance regulator to disregard the voting instructions of owners of Variable Contracts is not inconsistent with either mixed funding or shared funding. Applicants state that The National Association of Insurance Commissioners Variable Life Insurance Model Regulation (the ''NAIC Model Regulation'') suggests that it is unlikely that insurance regulators would find an underlying fund's investment policy, investment adviser or principal underwriter objectionable for one type of Variable Contract but not another type.

13. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its contracts. However,

the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem. Shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act permit. Applicants note that affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected Participating Insurance Company will be required to withdraw its separate account investments in the relevant portfolio. This requirement will be provided for in the Participation Agreement that will be entered into by Participating Insurance Companies with an Insurance Fund.

14. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act give Participating Insurance Companies the right to disregard the voting instructions of VLI Contract owners in certain circumstances. This right derives from the authority of state insurance regulator over VLI Accounts and VA Accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), a Participating Insurance Company may disregard VLI Contract owner voting instructions only with respect to certain specified items. Applicants state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by such contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the Act that the Participating Insurance Company's disregard of voting instructions be reasonable and based on specific good faith determinations.

15. Applicants state that a particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the voting instructions of a majority of VLI Contract owners. The Participating Insurance Company's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of VLI Contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the Insurance Fund's election, to withdraw its VLI Accounts and VA Accounts' investments in the relevant portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the Participation Agreement entered into between the Participating Insurance Company and the Insurance Fund.

16. Applicants assert that there is no reason why the investment policies of a portfolio would or should be materially different from what these policies would or should be if the portfolio supported only VLI Accounts or VA Accounts, whether flexible premium or scheduled premium VLI Contracts.

17. Applicants represent that each portfolio will be managed to attempt to achieve its specified investment objective, and not favor or disfavor any particular Participating Insurance Company or type of insurance contact. There is no reason to believe that different features of various types of Variable Contracts will lead to different investment policies for each or for different Separate Accounts. The sale of all Variable Contracts and ultimate success of all Separate Accounts depends, at least in part, on satisfactory investment performance, which provides an incentive for each Participating Insurance Company to seek optimal investment performance.

18. Furthermore, Applicants state that no single investment strategy can be identified as appropriate to a particular Variable Contract. Each ''pool'' of VLI Contract and VA Contract owners is composed of individuals of diverse financial status, age, insurance needs and investment goals. A portfolio supporting even one type of Variable Contract must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic support for the continuation of the portfolios. Mixed and shared funding will broaden the base of potential Variable Contract owners, which may facilitate the establishment of additional portfolios serving diverse goals.

19. Applicants do not believe that the sale of the Shares to Qualified Plans, Advisers or General Accounts will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between owners of VLI Contracts and VA Contracts. Applicants submit that either there are no conflicts of interest or that there exists the ability by the affected parties to resolve potential conflicts consistent with the best interests of Variable Contract owners and participants in Qualified Plans.

20. Applicants considered whether there are any issues raised under the Internal Revenue Code, Treasury Regulations, or Revenue Rulings thereunder, if Qualified Plans, VLI Accounts, VA Accounts, Advisers and General Accounts all invest in the same portfolio. Applicants have concluded that neither the Code, nor the Treasury Regulations nor Revenue Rulings thereunder, present any inherent conflicts of interest if Qualified Plans, Advisers, General Accounts, VLI Accounts and VA Accounts all invest in the same portfolio. Applicants note that, while there are differences in the manner in which distributions from VLI Accounts and Qualified Plans are taxed, these differences have no impact on the portfolios.

21. Applicants considered whether it is possible to provide an equitable means of giving voting rights to VLI Contract owners and to Qualified Plans. In connection with any meeting of an Insurance Fund shareholders, the relevant transfer agent will inform each Participating Insurance Company, Adviser and Qualified Plan of their share holdings and provide other information necessary for such shareholders to participate in the meeting (e.g., proxy materials). Each Participating Insurance Company then will solicit voting instructions from owners of VLI Contracts and VA Contracts as required by Rules 6e–2 and 6e–3(T), or Section 12(d)(1)(E)(iii)(aa) of the Act, as applicable, and its Participation Agreement with an Insurance Fund. Shares held by a General Account of a Participating Insurance Company will be voted by the Participating Insurance Company in the same proportion as shares for which it receives voting instructions from its Variable Contract owners. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to the shares would be no different from the voting rights that are provided to Qualified Plans with respect to shares of mutual funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's

decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Fund, to withdraw its investment in a portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

22. Applicants do not believe that the ability of an Insurance Fund to sell Shares directly to its Adviser, Qualified Plans, or a General Account of a Participating Insurance Company gives rise to a senior security. ''Senior Security'' is defined in Section 18(g) of the Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans and owners of VLI Contracts, VLI Accounts, VA Accounts, Participating Insurance Companies, Qualified Plans, General Accounts and the Adviser, only have, or will only have, rights with respect to their respective Shares. These parties can only redeem such Shares at net asset value. No shareholder of a portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicants do not believe that the veto power of state insurance commissioners over certain potential changes to portfolio investment objectives approved by owners of VLI Contracts creates conflicts between the interests of such owners and the interests of Qualified Plan participants. Applicants note that a basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Their interests and opinions may differ, but this does not mean that inherent conflicts of interest exist between or among such shareholders or that occasional conflicts of interest that do occur between or among them are likely to be irreconcilable.

24. Although Participating Insurance Companies may have to overcome regulatory impediments in redeeming shares of a portfolio held by their VLI Accounts, the Qualified Plans and the participants in participant-directed Qualified Plans can make decisions quickly and redeem their Shares and reinvest in another investment company or other funding vehicle without impediments, or as is the case with most Qualified Plans, hold cash pending suitable investment. As a result, conflicts between the interests of VLI Contract owners and the interests of Qualified Plans and Qualified Plan participants can usually be resolved quickly since the Qualified Plans can, on their own, redeem their Shares.

25. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Insurance Companies and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants in the Qualified Plans and VLI Contract owners (or for that matter, VA Contract owners) and Qualified Plan participants from future changes in the federal tax laws than that which already exists between Variable Contract owners.

26. Applicants believe that the discussion contained in the application demonstrates that the sale of shares to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest between the interests of Qualified Plan participants and VLI Contract owners or other investors. Further, Applicants submit that the use of a portfolio with respect to Qualified Plans is not substantially dissimilar from each portfolio's current and anticipated use, in that Qualified Plans, like VLI Accounts, are generally long-term investors.

27. Applicants assert that permitting an Insurance Fund to sell Shares to its Adviser (for the purpose of obtaining seed capital) or to the General Account of a Participating Insurance Company will enhance management of the Insurance Fund without raising significant concerns regarding material irreconcilable conflicts among different types of investors.

28. Various factors have limited the number of insurance companies that offer Variable Contracts. These factors include the costs of organizing and operating a funding vehicle, certain insurers' lack of experience with respect to investment management, and the lack of name recognition by the public of certain insurers as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Use of a portfolio as a common investment vehicle for VLI Accounts would reduce or eliminate these concerns. Mixed and shared funding should also provide several benefits to VLI Contract owners by eliminating a significant portion of the costs of establishing and administering separate underlying funds.

29. Applicants state that Participating Insurance Companies will benefit not only from the investment expertise of the Adviser, but also from the potential cost efficiencies and investment flexibility afforded by larger pools of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a portfolio, thereby promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new portfolios more feasible. Therefore, making the portfolios available for mixed and shared funding will encourage more insurance companies to offer VLI Accounts. This should result in increased competition with respect to both VLI Account design and pricing, which can in turn be expected to result in more product variety.

30. Applicants also submit that, regardless of the type of shareholder in a portfolio, the Adviser is or would be contractually and otherwise obligated to manage the portfolio solely and exclusively in accordance with that portfolio's investment objectives, policies and restrictions, as well as any guidelines established by the Board.

31. Applicants assert that sales of Shares as described above will not have any adverse federal income tax consequences to other investors in the portfolios.

32. In addition, Applicants assert that granting the exemptions requested in the application is in the public interest and, as discussed above, will not compromise the regulatory purposes of Sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief shall be subject to the following conditions, which shall apply to each Insurance Fund:

1. A majority of the Board will consist of persons who are not ''interested persons'' of an Insurance Fund, as defined by Section 2(a)(19) of the Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification or bona fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board will monitor an Insurance Fund for the existence of any material irreconcilable conflict between and among the interests of the owners of all VLI Contracts and VA Contracts and participants of all Qualified Plans investing in the Insurance Fund, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of an Insurance Fund are being managed; (e) a difference in voting instructions given by VA Contracts owners, VLI Contact owners, and Qualified Plans or Qualified Plan participants; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of General Account assets in a portfolio of an Insurance Fund), an adviser and its affiliates, and any Qualified Plan that executes a Participation Agreement upon becoming an owner of 10 percent or more of the assets of a portfolio (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Each Participant will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever variable Contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Trustee for a Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with the relevant Insurance Fund, and these responsibilities will be carried out with a view only to the interests of the Variable Contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans under their Participation Agreement with the relevant Insurance Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested trustees of such Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of their VLI Accounts or VA Accounts from the relevant portfolio and reinvesting such assets in a different investment vehicle including another portfolio, (b) in the case of a Participating Insurance Company, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., VA Contract owners or VLI Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (c) withdrawing the assets allocable to some or all of the Qualified Plans or Separate Accounts from the affected portfolio or Participating Insurance Company and reinvesting them in a different investment medium and (d) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the Insurance Fund, to withdraw such Participating Insurance Company's VLI Account and VA Account investments in a portfolio, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Fund, to withdraw its investment in the portfolio, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their Participation Agreement with an Insurance Fund, and these responsibilities will be carried out with a view only to the interests of Variable Contract owners or, as applicable, Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested trustees of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will an Insurance Fund or its Adviser, as relevant, be required to establish a new funding vehicle for any Variable Contract or Qualified Plan. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the Variable Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan trustee makes such decision without a Qualified Plan participant vote.

5. The determination by the Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners whose Contracts are issued through registered VLI Accounts or registered VA Accounts for as long as required by the Act as interpreted by the Commission. However, as to Variable Contracts issued through VLI Accounts or VA Accounts, not registered as investment companies under the Act, pass-through voting privileges will be extended to Variable Contract owners to the extent granted by the Participating Insurance Company. Accordingly, such Participating Insurance Companies,

where applicable, will vote the shares of each portfolio held in their VLI Accounts and VA Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that their VLI Accounts and VA Accounts investing in the relevant portfolio calculate voting privileges in a manner consistent with all other participants.

The obligation to calculate voting privileges as provided in this Application shall be a contractual obligation of all Participating Insurance Companies under their Participation Agreement with an Insurance Fund. Each Participating Insurance Company will vote Shares held in its VLI Accounts or VA Accounts for which it has not received timely voting instructions, as well as Shares held in its General Account or otherwise attributed to it, in the same proportion as those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law, governing Qualified Plan documents and as provided in this application.

7. As long as the Act requires pass-through voting privileges to be provided to Variable Contract owners or the Commission interprets the Act to require the same, an Adviser or any General Account will vote their respective Shares in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights; provided, however, that the Adviser or General Account will vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Insurance Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in its shares) and, in particular, an Insurance Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although each Insurance Fund is not, or will not be, one of those trusts of the type described in Section 16(c) of the Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each Insurance Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate thereto.

9. An Insurance Fund will make available Shares under a Variable Contract and/or Qualified Plan at or about the time it accepts any seed capital from the Adviser or from a General Account of a Participating Insurance Company.

10. Each Insurance Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Qualified Plan documents. Each Insurance Fund will disclose, in its prospectus that: (a) Shares may be offered to VLI Accounts and VA Accounts funding both VA Contracts and VLI Contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in an Insurance Fund and the interests of Qualified Plans investing in an Insurance Fund, if applicable, may conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then an Insurance Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board, on behalf of an Insurance Fund, such reports, materials or data as the Board reasonably may request so that the trustees may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their Participation Agreement with an Insurance Fund.

13. All reports of potential or existing conflicts received by the Board, on behalf of an Insurance Fund, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Insurance Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan an owner of 10 percent or more of the assets of a portfolio unless the Qualified Plan executes an agreement with an Insurance Fund governing participation in the portfolio that includes the conditions set forth in the Application to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

## Conclusion

Applicants submit, for all the reasons explained above, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Kevin O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23687 Filed 9–27–13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release Nos. 33–9456; 34–70491; File No. 265–27]**

## Advisory Committee on Small and Emerging Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of Federal Advisory Committee Renewal.

**SUMMARY:** The Securities and Exchange Commission is publishing this notice to announce the renewal of the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies.

**FOR FURTHER INFORMATION CONTACT:** Johanna Losert, Special Counsel, Office of Small Business Policy, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549, (202) 551–3460.

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the

Federal Advisory Committee Act, 5 U.S.C.—App., the Commission is publishing this notice that the Chair of the Commission, with the concurrence of the other Commissioners, has approved the renewal of the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies (the ''Committee''). The Chair of the Commission affirms that the renewal of the Committee is necessary and in the public interest.

The Committee's objective is to provide the Commission with advice on its rules, regulations, and policies, with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

(1) Capital raising by emerging privately held small businesses (''emerging companies'') and publicly traded companies with less than $250 million in public market capitalization (''smaller public companies'') through securities offerings, including private and limited offerings and initial and other public offerings;

(2) Trading in the securities of emerging companies and smaller public companies; and

(3) Public reporting and corporate governance requirements of emerging companies and smaller public companies.

Up to 20 voting members will be appointed to the Committee who can effectively represent those directly affected by, interested in, and/or qualified to provide advice to the Commission on its rules, regulations, and policies as set forth above. The Committee's membership will continue to be balanced fairly in terms of points of view represented and functions to be performed. Non-voting observers for the Committee from the North American Securities Administrators Association and the U.S. Small Business Administration may also be named.

The charter provides that the duties of the Committee are to be solely advisory. The Commission alone will make any determinations of action to be taken and policy to be expressed with respect to matters within the Commission's authority as to which the Committee provides advice or makes recommendations. The Committee will meet at such intervals as are necessary to carry out its functions. The charter contemplates that the full Committee will meet three times annually. Meetings of subgroups or subcommittees of the full Committee may occur more frequently.

The Committee will operate for two years from the date it was renewed or such earlier date as determined by the Commission unless, before the expiration of that time period, it is renewed in accordance with the Federal Advisory Committee Act. A copy of the charter for the Committee has been filed with the Chair of the Commission, the Committee on Banking, Housing, and Urban Affairs of the United States Senate, and the Committee on Financial Services of the United States House of Representatives. A copy of the charter also was furnished to the Library of Congress and posted on the Commission's Web site at *www.sec.gov.*

By the Commission.

Dated: September 24, 2013.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2013–23696 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 3, 2013 at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Adjudicatory matters; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: September 26, 2013.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2013–23954 Filed 9–26–13; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70487; File No. SR–NYSE–2013–62]**

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Listing Standard for Reverse Merger Companies Set Forth in Section 102.01F of The Exchange's Listed Company Manual to Harmonize With Nasdaq Stock Market Rules That Require the Timely Filing of All Required Reports for the Most Recent 12-Month Period

September 24, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 16, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing standard for Reverse Merger Companies set forth in Section 102.01F of the Exchange's Listed Company Manual (the ''Manual'') to harmonize with requirements imposed by the Nasdaq Stock Market (''Nasdaq'') and modify in one respect the circumstances under which a reverse merger company may be eligible to list under the rule. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The NYSE proposes to amend its listing standard for Reverse Merger Companies set forth in Section 102.01F of the Manual to harmonize with requirements imposed by Nasdaq and modify in one respect the circumstances under which a Reverse Merger Company may be eligible to list under the rule.

Section 102.01F of the Manual defines a Reverse Merger Company and establishes initial listing standards for Reverse Merger Companies.[4] Among other requirements Section 102.01F provides that a Reverse Merger Company is eligible to list on the Exchange only if it has timely filed with the Securities and Exchange Commission (''Commission'') all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing all required audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the Form 8–K or Form 20–F containing all of the information required by Item 2.01(f) of Form 8–K, including all required audited financial statements (the ''Reverse Merger Form 8–K'').[5] In contrast, Nasdaq Marketplace Rule 5110(c) provides that a Reverse Merger Company may list if it has filed all required reports since the consummation of the Reverse Merger, including the timely filing of all required reports for the prior year, from the date of approval, and the filing of at least one annual report containing all required audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the Reverse Merger Form 8–K. The Exchange proposes to harmonize its rule with Nasdaq Marketplace Rule 5110(c), and modify Section 102.01F to provide that a Reverse Merger Company may list if, as of the date of listing, it has filed all required reports since the Reverse Merger, including (i) the filing of at least one annual report containing all required audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the Reverse Merger Form 8–K and (ii) the timely filing of all required reports for the most recent 12-month period prior to the listing date including at least one annual report containing all required audited financial statements.[6] The Exchange believes that investors are sufficiently protected if a Reverse Merger Company is current in its filings at the time of listing and has demonstrated its ability to timely file its reports over a period of 12 months.[7] The Exchange does not believe that a Reverse Merger Company should be ineligible for listing on the basis that it had a filing delinquency more than 12 months earlier that has subsequently been cured. However, under Section 101.00 of the Manual, the Exchange has broad discretion regarding the listing of a company, so the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. For example, habitually late filers may be required to comply with additional criteria as a condition to listing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[8] of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular in that it is designed 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. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because any company listing under the proposed amended rule will still need to be current in its filings with the Commission and will have

[4] For purposes of Section 102.01F, a ''Reverse Merger Company'' is a company formed by means of a ''Reverse Mergers.'' A ''Reverse Merger'' is defined as any transaction whereby an operating company becomes an Exchange Act reporting company by combining directly or indirectly with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company which qualified for initial listing under Section 102.06. In determining whether a company is a shell company, the Exchange will consider, among other factors: whether the Company is considered a ''shell company'' as defined in Rule 12b–2 under the Act; what percentage of the company's assets are active versus passive; whether the company generates revenues, and if so, whether the revenues are passively or actively generated; whether the company's expenses are reasonably related to the revenues being generated; how many employees work in the company's revenue-generating business operations; how long the company has been without material business operations; and whether the company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

[5] A Reverse Merger Company must also meet all other applicable listing requirements to be eligible for listing.

[6] The Exchange believes it is appropriate to impose these requirements as of the date of listing rather than the date the issuer applies to list on the Exchange, as there is sometimes a significant period of time between the date of submission of the application and the listing date and an issuer that is compliant with these requirements on the application date may no longer be compliant as of its listing date. NYSE Regulation staff will independently confirm that the issuer is compliant with these requirements as a condition to the authorization of the listing.

[7] The Exchange notes that Section 102.01F in its current form provides for two circumstances in which a Reverse Merger Company may list notwithstanding the fact that it has not made all required filings on a timely basis for the previous 12 months, provided that it is not delinquent in its filing obligations at the time of listing. First, a Reverse Merger Company will not be subject to the requirements of Section 102.01F if it is listing in connection with a firm commitment underwritten public offering where the proceeds to the Reverse Merger Company will be at least $40,000,000 and the offering is occurring subsequent to or concurrently with the Reverse Merger. In addition, a Reverse Merger Company that has filed at least four annual reports with the Commission, which each contain all required audited financial statements for a full fiscal year commencing after filing the Reverse Merger Form 8–K, will not be subject to the requirements of Section 102.01F, other than the requirement that its common stock has traded for at least one year in the U.S. over-the-counter market, on another national securities exchange or on a regulated foreign exchange following the consummation of the Reverse Merger.. However, such companies will be required to (i) comply with the applicable stock price requirement of Section 102.01B at the time of each of the filing of the initial listing application and the date of the Reverse Merger Company's listing and (ii) not be delinquent in their filing obligations with the Commission. In either of the cases described in this paragraph, the Reverse Merger Company will only need to meet the requirements of one of the financial initial listing standards in Section 102.01C in addition to all other applicable non-financial listing standard requirements, including, without limitation, the requirements of Sections 102.01A, 102.01B and 303A of the Manual.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78a.

[10] 15 U.S.C. 78f(b)(5).

demonstrated its ability to remain timely in its filings for at least the previous 12 months. Moreover, the proposed amendment will foster cooperation and coordination with persons engaged in regulating transactions in securities by harmonizing the Exchange's listing requirements in this regard with those of Nasdaq.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition. The proposed amendment may potentially increase the competition for the listing of Reverse Merger Companies, as it will eliminate a discrepancy between the applicable listing requirements of the Exchange and those of Nasdaq and therefore enable the Exchange to list Reverse Merger Companies that are currently qualified to list on Nasdaq but may not be able to list on the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–NYSE–2013–62 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–NYSE–2013–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–62 and should be submitted on or before October 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23685 Filed 9–27–13; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70486; File No. SR–OCC–2013–12]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to Revise OCC By-Laws and Rules to Make Structural Changes to OCC's Membership/Risk Committee Regarding Public Directors and the Process for Designating Membership/Risk Committee Members

September 24, 2013.

**I. Introduction**

On August 2, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2013–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 21, 2013.[3] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

**II. Description**

OCC is amending its By-Laws and Rules to make structural changes to OCC's Membership/Risk Committee (''MRC'') regarding Public Directors [4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 34–70207 (August 15, 2013), 78 FR 51786 (August 21, 2013).

[4] In relevant part, Article III, Section 6A of OCC's By-Laws defines a Public Director as a person who is not affiliated with any national securities

and the process for designating MRC members. Specifically, OCC is amending Article III, Section 9 of OCC's By-Laws to provide that at least one Public Director is required to serve on the MRC. The Public Director(s) will be nominated to serve on the MRC by the Chairman of the Board and such nomination will be subject to approval by the Board of Directors. OCC is also amending Article III, Section 9 of OCC's By-Laws to provide that the Chairman of the MRC will be required to be a Public Director. If more than one Public Director is nominated to serve on the MRC, the Chairman of the Board will nominate one of the Public Directors to serve as the MRC Chairman.

In addition, OCC is amending Article III, Section 9 of OCC's By-Laws to eliminate the requirement that MRC members must be designated at the first meeting of OCC's Board of Directors that follows each annual meeting. Instead, OCC's By-Laws will require MRC members to be designated annually.

OCC is also amending Article III, Section 9 to eliminate specific references to Article V of the By-Laws and Chapter VI of the Rules in order to avoid any erroneous inference that those are the only provisions of OCC's By-Laws and Rules that set forth powers and duties of the MRC, which are in fact contained in a number of other provisions of its By-Laws and Rules as well.

## III. Discussion

Section 19(b)(2)(C) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[6] requires that the rules of a registered clearing agency be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, protect investors and the public interest. Section 17A(b)(3)(F) [7] of the Act also requires that the rules of a registered clearing agency not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

The Commission finds that the rule change is consistent with Section 17A(b)(3)(F) of the Act [8] because amending OCC's By-Laws to require that OCC's Board of Directors appoints at least one Public Director to the MRC and designates a Public Director as Chairman of the MRC, should help ensure that diverse viewpoints contribute to the decision-making process at the MRC, which should ultimately lead to decisions that assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible, and generally protect investors and the public interest. Furthermore, by proposing rules that require the appointment of a Public Director to the MRC, the rule change should help diminish the likelihood of unfair discrimination in the evaluation of prospective OCC members and the treatment of current OCC members by interested participants.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–OCC–2013–12) be and hereby is *approved.*[11]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23684 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

exchange, national securities association, or any broker or dealer engaging in securities transactions.

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70482; File No. SR–FINRA–2013–039]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Clarify the Classification and Reporting of Certain Securities to FINRA

September 24, 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 16, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is filing a proposed rule change to adopt an interpretation to clarify the classification and the reporting of certain securities to FINRA.

The proposed rule change does not make any changes to the text of FINRA rules.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA trade reporting rules generally require that members report over-the-counter (''OTC'') transactions in debt securities that are TRACE-Eligible Securities and equity securities to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

FINRA.[3] FINRA Rule 6622 requires that members report OTC transactions in ''OTC Equity Securities''[4] to the ORF and the FINRA Rule 6700 Series requires members to report transactions in ''TRACE-Eligible Securities'' to TRACE.[5]

FINRA recently has received inquiries regarding the appropriate classification of certain ''hybrid'' securities for trade reporting purposes. FINRA is aware that as new securities are created and issued, in some cases, the newer hybrid iteration, although derived from a traditional security, may be increasingly complex, and may have both debt- and equity-like features. These hybrid securities are frequently designed to straddle both classifications for a variety of purposes, including the tax treatment applicable to issuers and recipients when distributions are made (or not made) to holders of the security, and the treatment of the principal as capital for issuers subject to capital requirements. As such, determining whether these hybrid securities should be classified as ''debt'' or ''equity'' for purposes of trade reporting to the appropriate FINRA facility has become less clear.

Given the complexity of these hybrid securities, FINRA proposes an interpretation regarding the classification and reporting of two categories of hybrid securities (depositary shares and capital trust securities (also referred to as trust preferred securities)) to clarify the appropriate trade reporting facility to which such securities should be reported.[6] In addition, FINRA proposes a policy to address the treatment of securities that are currently being reported to a facility that is not the designated facility under this interpretation.

Depositary Shares

FINRA proposes to interpret the term OTC Equity Security to include a depositary share that is not listed on an equity facility of a national securities exchange. Depositary shares generally are securities that represent a fractional interest in a share of preferred stock, which is considered an equity security. Depositary shares generally entitle the holder, through the depositary, to a proportional fractional interest in the rights, powers and preferences of the preferred stock represented by the depositary share. Under this interpretation, members must request a symbol, if one has not already been assigned, for such depositary shares for ORF reporting in compliance with the applicable reporting requirements. Members must also report in accordance with ORF requirements; for example, price should be reported as the dollar price per share and volume should be reported as the number of depositary shares traded.[7]

Capital Trust Securities

FINRA proposes to interpret the term TRACE-Eligible Security to include capital trust securities and trust preferred securities. Historically, many of these securities, particularly those issued with $1,000 par value and not listed on an equity facility of a national securities exchange, were reported to Fixed Income Pricing System (''FIPS'') prior to the implementation of TRACE.[8] When TRACE was proposed, FIPS securities were to be transferred to TRACE.[9] In addition, as part of the proposal, FINRA (then NASD) specifically identified capital trust securities in a list of instruments that NASD considered TRACE-Eligible Securities, which would be reported to TRACE and otherwise subject to the FINRA Rule 6700 Series requirements.[10]

FINRA is clarifying that capital trust securities and trust preferred securities (other than a capital trust security or a trust preferred security that is listed on an equity facility of a national securities exchange) must be reported to TRACE (and not to ORF) and transactions in such securities must be reported in compliance with the applicable reporting requirements.[11] For example, price should be reported as a percentage of par value and volume should be reported as the total par value of the transaction (not the number of bonds traded).[12]

Hybrid Securities Currently Being Reported to ORF and TRACE

FINRA believes that, given the complexity of many of the securities that are the subject of this proposed rule change, it is reasonable that firms, despite their best efforts, may have reached different conclusions on where transactions in these hybrid securities should be reported. FINRA proposes that, as of the effective date of this proposed rule change, securities that are affected by this interpretation will be transferred, if necessary, for reporting to the appropriate trade reporting facility, and after this transfer members must report all transactions in such securities to the appropriate trade reporting facility. Members will not be required to retroactively cancel and correct any

[3] *See* FINRA Rules 6282 (relating to the Alternative Display Facility (''ADF'')), 6380A (relating to the FINRA/Nasdaq Trade Reporting Facility), 6380B (relating to the FINRA/NYSE Trade Reporting Facility), 6622 (relating to the OTC Reporting Facility (''ORF'')) and 6730 (relating to the Trade Reporting and Compliance Engine (''TRACE'')).

[4] FINRA Rule 6420(f) defines ''OTC Equity Security'' to include ''any equity security that is not an 'NMS stock' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term 'OTC Equity Security' shall not include any Restricted Equity Security.'' FINRA Rule 6420(k) defines ''Restricted Equity Security'' to mean ''any equity security that meets the definition of 'restricted security' as contained in Securities Act Rule 144(a)(3).''

[5] FINRA Rule 6710(a) defines ''TRACE-Eligible Security'' to include ''a debt security that is United States ('U.S.') dollar-denominated and issued by a U.S. or foreign private issuer, and, if a 'restricted security' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A.''

[6] The proposed interpretation applies solely to a hybrid security that is not listed on an equity facility of a national securities exchange. *See, e.g., FINRA Trade Reporting Notice,* February 22, 2008 (FINRA applied TRACE reporting requirements, distinguishing between listed and unlisted securities, and required members to report transactions in unlisted convertible debt and unlisted equity-linked notes to TRACE, and OTC transactions in convertible debt and equity-linked notes listed on an equity facility of a national securities exchange to an appropriate FINRA equity trade reporting facility for NMS Stocks (the ADF or a trade reporting facility (''TRF'')). For purposes of this proposed rule change, the term ''listed on an equity facility of a national securities exchange'' means a security that qualifies as an NMS stock (as defined in Rule 600(b)(47) of Regulation NMS under the Act) as distinguished from a security that is listed on a bond facility of a national securities exchange. *See* 17 CFR 242.600(b)(47).

[7] *See* FINRA Rule 6622; *see also* Trade Reporting FAQ 101.6, available at *www.finra.org/Industry/Regulation/Guidance/p038942#101.*

[8] FINRA (formerly, the National Association of Securities Dealers, Inc. (''NASD'')) operated FIPS through its then subsidiary, NASDAQ. FIPS began in April 1994 and collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds. OTC capital trust securities and trust preferred securities were treated as FIPS securities and often included in the regularly published lists of the most actively-traded FIPS securities, referred to as the ''FIPS 50.'' *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4, Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System) (File No. SR–NASD–99–65) (''SEC TRACE Approval Order'').

[9] *See, e.g.,* SEC TRACE Approval Order, 66 FR 8131, at 8132–8133, note 13 and note 16.

[10] In SR–NASD–99–65, FINRA (then NASD) indicated that capital trust securities would be TRACE-Eligible Securities. *See* Securities Exchange Act Release No. 42201 (December 3, 1999), 64 FR 69305, at 69309 (December 10, 1999) (Notice of Filing of Proposed Rule Change Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System (''FIPS'')) (File No. SR–NASD–99–65); *see also* SEC TRACE Approval Order.

[11] This interpretation would apply even if the capital trust security (or a trust preferred security) was previously listed on an equity facility of a national securities exchange and reported to a FINRA equity facility, but has since been delisted. Once delisted, the security must be reported to TRACE.

[12] *See* FINRA Rule 6730.

transactions in such securities previously reported to a facility that is not the designated facility under this interpretation. Thus, members will not be required to cancel and correct transactions in capital trust securities reported to the ORF or transactions in depositary shares reported to TRACE prior to the effective date of this proposed rule change.[13] However, if a firm reported a transaction to the facility designated in this proposed interpretation, but did not report in accordance with applicable trade reporting requirements of that facility (*e.g.,* a firm reported a transaction to ORF, but inaccurately reported the price or size as if reporting to TRACE), the firm will be required to cancel and re-report such transactions accurately.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that by clarifying the classification of certain hybrid securities for reporting purposes the proposed rule change will reduce market and investor confusion. In addition, FINRA believes that the proposed rule change will improve transparency significantly because members will report transactions in the same security using a uniform set of conventions and to the same facility (*i.e.,* the ORF or TRACE). This will allow investors and other market participants to better compare transaction pricing and the quality of their executions, which promotes just and equitable principles of trade, deters fraudulent and manipulative acts and practices in the market for such securities, and furthers the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Members that are required currently to report transactions in hybrid securities will continue to be subject to transaction reporting requirements and will be provided clarity as to which facility such hybrid securities should be reported, which will promote uniformity and consistency in trade reporting within these categories of products.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–039 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR- FINRA–2013–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at principal office of FINRA. 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–FINRA–2013–039 and should be submitted on or before October 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23681 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[13] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. *See* 15 U.S.C. 78ee. FINRA obtains its Section 31 fees and assessments from its membership, in accordance with Section 3 of Schedule A to the FINRA By-Laws. The transactions that are assessable under Section 3 of Schedule A to the FINRA By-Laws are reported to FINRA through one of FINRA's equity trade reporting facilities: The ORF, the ADF, or a TRF. As expressly stated in the Act, sales of bonds, debentures, or other evidence of indebtedness (debt securities) are excluded from Section 31 of the Act. *See* 15 U.S.C. 78ee(b). Because of this exclusion under Section 31 of the Act, transactions reported to TRACE are not subject to the regulatory transaction fee under Section 3 of Schedule A to the FINRA By-Laws. To determine whether a non-exchange listed security is an equity security or a debt security for purposes of assessing the regulatory transaction fee, FINRA relies on the facility to which the transaction is reported. If the transaction is reported to the ORF, the transaction is treated as one involving an equity security and is subject to the regulatory transaction fee. If the transaction is reported to TRACE, the transaction is treated as one involving a debt security and thus is not subject to the regulatory transaction fee. *See Regulatory Notice* 08–72 (November 2008).

[14] 15 U.S.C. 78*o*-3(b)(6).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70488; File No. SR–BOX–2013–45]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules in Order To Implement the Upcoming Change to Friday Expiration Processing and Eventual Transition to Friday Expiration for All Monthly Expiration Contracts

September 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2013, BOX Options Exchange LLC (''BOX'' 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 to amend the Exchange rules in order to implement the upcoming change to Friday expiration processing and eventual transition to Friday expiration for all monthly expiration contracts. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend certain rules in order to implement the upcoming change to Friday expiration processing and eventual transition to Friday expiration for all monthly expiration contracts. Specifically, this proposal is based on a recent filing by The Options Clearing Corporation (''OCC'') and is designed to conform the Exchange's rules to the changes implemented by the OCC.[3] 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. The Exchange understands that other exchanges have and will be filing similar rules to effect this industry-wide initiative. Additionally, these changes are based on a proposal recently submitted by NYSE Arca, Inc. (''NYSE Arca'').[4]

OCC Proposal

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'').[5] As a result of the OCC's rule change, the expiration date for monthly expiration contracts would be changed to the third *Friday* of the expiration month. The expiration time would continue to be 11:59 p.m. ET on the expiration date. The expiration date change would apply only to monthly expiration contracts expiring after February 1, 2015, and, in this regard, the Exchange does not propose to change the expiration date for any outstanding option contract.

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 flexibly structured (''FLEX'') options having expiration dates later than February 1, 2015 cannot expire on a Saturday unless they are specified by OCC as grandfathered.

In order to provide a smooth transition to the proposed Friday expiration, the Exchange, together with other option exchanges and the OCC, began moving the expiration exercise procedures to Friday for all monthly expiration contracts on June 21, 2013, even though the contracts will continue to expire on Saturday. After February 1, 2015, virtually all monthly expiration contracts would actually expire on Friday. The only monthly expiration contracts that would expire on a Saturday after February 1, 2015 would be certain options that were listed prior to the effectiveness of the OCC's proposal, and a limited number of options that may be listed prior to necessary systems changes of the Exchange and the other options exchanges, which were completed in August 2013. The Exchange, along with other option exchanges, has agreed that, once these systems changes are made, it will not list any additional options with Saturday expiration dates falling after February 1, 2015.

Background

Saturday was established as the monthly expiration date for OCC-cleared options primarily in order to allow sufficient time for processing of option exercises, including correction of errors, while the markets were closed and positions remained fixed. However, improvements in technology and long experience have rendered Saturday expiration processing inefficient. Indeed, many non-monthly expiration contracts are currently traded with business day expiration dates. These include FLEX options and quarterly, monthly, and weekly options. Expiration exercise processing for these non-monthly expiration contracts occurs on a more compressed timeframe and with somewhat different procedures than Saturday expiration processing for monthly expiration contracts.

It has been a long-term goal of OCC and its clearing members to move the expiration process for all monthly expiration contracts from Saturday to Friday night. Eliminating Saturday expirations will allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members. Furthermore, it will compress the operational timeframe for processing the options expirations such that clearing members will be required to reconcile options trades on the trade date, which will enhance intra-day risk management of cleared trades by the clearing member

[3] *See* Securities Exchange Act Release No. 69772 (June 17, 2013), 78 FR 37645 (June 21, 2013)(Order approving SR–OCC–2013–04).

[4] *See* Securities Exchange Act Release No. 70372 (September 11, 2013)(Notice of Filing and Immediate Effectiveness of SR–NYSEARCA–2013–88).

[5] *See, e.g.,* the definition of ''expiration time'' in Article I of the OCC By-Laws.

and promote real-time trade date reconciliation and position balancing by clearing members.

Industry groups, clearing members and the option exchanges have been active participants in planning for the transition to the Friday expiration. In March 2012, OCC began to discuss moving monthly expiration contracts 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. OCC also discussed the project with the Intermarket Surveillance Group and at an OCC Operations Roundtable. In each case, the initiative received broad support.

Friday expiration processing is also consistent with the long-standing rules and procedures of the options exchanges and the Financial Industry Regulatory Authority (''FINRA''), which generally provide that exercise decisions with respect to expiring monthly expiration contracts must be made by, and exercise instructions may not be accepted from customers after, 5:30 p.m. ET on the business day preceding expiration (usually Friday).[6] Brokerage firms may set earlier cutoff times for customers submitting exercise notices. Clearing members of OCC are permitted to submit exercise instructions after the cutoff time (''supplementary exercises'') only in case of errors or other unusual situations, and may be subject to fines or disciplinary actions.[7] The Exchange believes that the extended period between cutoff time and expiration of options is no longer necessary given modern technology.

Transition Period

Based on significant dialogue between the Exchange, other option exchanges, the OCC and its clearing members regarding the move to Friday expiration, the Exchange believes that the adoption of Friday expiration for monthly expiration contracts is best accomplished through an appropriate transition period, during which processing activity for all options, whether expiring on Friday or Saturday, has moved to Friday, followed by a change in the expiration day for new series of options. In May 2012, it was determined that Friday, June 21, 2013, would be an appropriate date on which to move expiration processing from Saturday to Friday night.

Accordingly, and based on the OCC's related proposal, beginning June 21, 2013, Friday expiration processing is in effect for all expiring monthly expiration contracts, regardless of whether the contract's actual expiration date is Friday or Saturday. However, for contracts having a Saturday expiration date, 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, so long as they are submitted in accordance with OCC's procedures governing such requests. After the transition period and the expiration of all existing Saturday-expiring options, expiration processing would be a single operational process and would run on Friday night for all monthly expiration contracts.

Friday Expiration Processing Schedule

Previously, expiration processing for monthly expiration contracts began on Saturday morning at 6:00 a.m. Central Time (''CT'') and was completed at approximately noon CT when margin and settlement reports are available. The window for submission of instructions in accordance with OCC's exercise-by-exception procedures under OCC Rule 805(d) was open from 6:00 a.m. to 9:00 a.m. CT on Saturday morning.[8] As proposed by OCC, the window for submission of exercise-by-exception instructions is now open from 6:00 p.m. to 9:15 p.m. CT on Friday evening.[9] Friday expiration processing for monthly expiration contracts therefore now begins at 6:00 p.m. CT on Friday evening and ends at approximately 2:00 a.m. CT on Saturday morning when margin and settlement reports would be available.[10]

Exercises for monthly expiration contracts with Saturday expirations must be allowed under the terms of the contracts. However, in order to accommodate the proposed new expiration schedule, the OCC also proposed to shorten the period of time in which clearing members may submit a supplementary exercise notice under OCC Rule 805(b). In addition, OCC amended Rule 801 to eliminate the ability of clearing members to revoke or modify exercise notices submitted to OCC. This change, along with the change in the processing timeline discussed above, more closely aligns OCC's expiration processing procedures with self-regulatory organization rules, including those of the Exchange, under which exchange members must submit exercise instructions by 5:30 p.m. ET on Friday and may not accept exercise instructions from customers after 5:30 p.m. ET on Friday. Accordingly, this change does not represent a departure from current practices for clearing members or their customers.

Grandfathering of Certain Options Series

Certain option contracts have already been listed on participant exchanges, including the Exchange, with Saturday expiration dates as distant as December 2016. Additionally, until participant exchanges, including the Exchange, complete certain systems enhancements, it is possible that additional option contracts may be listed with Saturday expiration dates beyond February 1, 2015. 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 option open interest would expire on a Saturday while other option open interest would expire on a Friday in the same expiration month. OCC clearing members have expressed a clear preference to not have a mix of option open interest in any particular month. Accordingly, the Exchange and other option exchanges have agreed not to permit the listing of, and OCC will not accept for clearance, any new option contracts with a Friday expiration if existing option contracts of the same series 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 monthly expiration contracts during the transition period, exercise requests received after Friday expiration

[6] *See, e.g.,* FINRA Rule 2360(b)(23)(A)(iii), which provides that ''[o]ption holders have until 5:30 p.m. Eastern Time ('ET') on the business day immediately prior to the expiration date to make a final exercise decision to exercise or not exercise an expiring option. Members may not accept exercise instructions for customer or noncustomer accounts after 5:30 p.m. ET.''

[7] *See* OCC Rule 805(g).

[8] OCC's exercise-by-exception procedures are described in OCC Rule 805(d), which generally provides that each clearing member will automatically be deemed to have submitted an exercise notice immediately prior to the expiration time for all in-the-money option contracts unless the clearing member has instructed OCC otherwise in a written exercise notice.

[9] *See supra,* note 3. The exercise-by-exception window for weekly and quarterly expiration options is from 6:00 p.m. to 7:00 p.m. CT.

[10] The new expiration schedule for Friday expiration processing is similar to the expiration schedule for weekly options, which begins at 6:00 p.m. CT on Friday evening and ends at 11:30 p.m. CT on Friday evening. All timeframes would be set forth in OCC's procedures and subject to change based on OCC's experience with Friday expiration processing.

processing is complete, but before the Saturday contract expiration time, will continue to be processed without fines or penalties.

Proposed Amendments to the Exchange's Rules

In order to implement the change to Friday expiration processing and eventual transition to Friday expiration for all monthly expiration contracts, the Exchange proposes to amend certain of its rules, as described below. The Exchange is also proposing, with this filing, to replace any reference in the purpose section of any past Exchange rule filings or previously released circulars to any expiration date other than Friday for a standard options contract with the new Friday standard. Essentially, the Exchange is now proposing to replace any historic references to expiration dates to be replaced with the proposed Friday expiration.

The Exchange proposes to amend Rule 9000 (Exercise of Options Contracts) in several areas, each of which is designed to differentiate between Friday and Saturday expirations. First, the Exchange proposes to specify in Rule 9000(b) that special procedures apply to the exercise of equity options on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day before their expiration. Second, the Exchange proposes to specify in Rule 9000(c) that, regarding exercise cut-off times, option holders have until 5:30 p.m. ET on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the business day immediately prior to the expiration date. Third, the Exchange proposes to specify in Rule 9000(h) that the advance notice described therein is applicable if provided by the Exchange on or before 5:30 p.m. ET on the business day (i.e., on Thursday) immediately prior to the business day of expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day immediately prior to the last business day before the expiration date (i.e., Thursday for Saturday expirations). Fourth, the Exchange proposes to specify in Rule 9000(i)(2) that the reference therein to ''unusual circumstances'' includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day the option contract expires (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the business day immediately prior to expiration. Fifth, the Exchange proposes to specify in Rule 9000(l)(8)(ii) that exercises of expiring American-style, cash-settled index options are not prohibited on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day prior to their expiration.

The Exchange proposes to amend Rule 6090(c) (Procedures for Adding and Deleting Strike Prices) with respect to the permitted timing for adding new series of index option contracts so as to differentiate between Friday and Saturday expirations. The Exchange proposes to specify that new series of index option contracts may be added up to, but not on or after, the fourth business day prior to expiration for an option contract expiring on a business day (i.e., up to, but not on or after, the opening of trading on Monday morning for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, the fifth business day prior to expiration.

The Exchange proposes to amend Rule 5050 (Series of Options Contracts Open for Trading) to differentiate between Friday and Saturday expirations. Specifically, the Exchange would specify that additional series of individual stock options may be added in unusual market conditions until the close of trading on the business day prior to expiration in the case of an option contract expiring on a business day (i.e., Thursday for a Friday expiration), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, until the close of trading on the second business day prior to expiration (i.e., until the close of trading on Thursday for Saturday expirations).

The Exchange proposes to amend Rule 3170 (Other Restrictions on Option Transactions and Exercises) with respect to certain timing for restrictions on the exercise of option contracts. Specifically, the Exchange proposes to specify that the 10-business-day period referenced in Rule 3170(a)(2) includes the expiration date for an option contract that expires on a business day. The Exchange also proposes to specify that, with respect to index options, restrictions on exercise may be in effect until the opening of business on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day before the expiration date. Finally, the Exchange proposes to specify in Rule 3170(a)(3)(B) that exercises of expiring American-style, cash-settled index options are not prohibited on the business day of their expiration (i.e., for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day, and as is currently the case for Saturday expirations, on the last business day prior to their expiration

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is 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 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.

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 allowing all options markets, including the clearing agencies, to have the same expiration date for standard options. 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. 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 Participants

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

because they are applied to all Participants equally. In the alternative, the Exchange believes that it helps all Participants by keeping the Exchange consistent with OCC practices and those of other Exchanges.

The Exchange further believes that the proposed rule change is consistent with the Act because the extended period between cutoff time and expiration of options is no longer necessary given modern technology. In this regard, and based on significant dialogue between the Exchange, other option exchanges, the OCC and its clearing members regarding the move to Friday expiration, the Exchange believes that the adoption of Friday expiration for monthly expiration contracts is best accomplished through an appropriate transition period during which processing activity for all options, whether expiring on Friday or Saturday, has moved to Friday, followed by a change in the expiration day for new series of options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is substantially similar to a filing submitted by NYSE Arca.[13] The Exchange does not believe the proposed rule change will impose a burden on intramarket competition because it will be applied to all Participants 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 not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow OCC to streamline the expiration process for all monthly expiration contracts and increase operational efficiencies for OCC and its clearing members. The proposed rule change also will allow OCC and its clearing members to reduce operational risk. Moreover, OCC has coordinated moving to a Friday night expiration process with options industry participants, including the Exchange, and has also obtained assurance from all such participants that they are able to adhere to OCC's Friday night expiration implementation schedule. Therefore, the Exchange does not believe the proposed rule change would impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change. 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 Act[14] and Rule 19b–4(f)(6) thereunder.[15] 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.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[16] to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BOX–2013–45 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BOX–2013–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BOX–2013–45 and should be submitted on or before October 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23686 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[13] *See supra,* note 4.

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70484; File No. SR–FICC–2013–08]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change Concerning the Mortgage-Backed Securities Division's Notification of Settlement Process

September 24, 2013.

### I. Introduction

On August 9, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2013–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 23, 2013.[3] The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change.

### II. Description

*A. Nature of the Proposed Rule Change*

FICC is making two changes to the notification of settlement (''NOS'') process currently utilized by FICC's mortgage-backed securities division (''MBSD''). First, FICC's rule change would shorten, from two days to one, the grace period during which members must reconcile NOS submissions. Second, the rule change would increase from $25 to $150 the penalty that members must pay each day if they fail to reconcile an NOS submission within this grace period.

*B. The Notification of Settlement Process*

MBSD members settle certain trades between themselves, without using the MBSD as a central counterparty.[4] The NOS process ensures that the MBSD is notified when these bilateral settlements occur.[5] Under the NOS process, both counterparties to a bilaterally settled trade must provide the MBSD with an NOS submission stating that settlement has occurred and on what terms.[6] If the trade details set forth in the counterparties' respective NOS submissions match, the MBSD updates each counterparty's purchase and sale report to reflect that the transaction has settled, and deletes the transaction from the counterparties' respective open commitment reports.[7]

Members seeking to initiate the NOS process are required to provide the MBSD with an NOS submission on clearance day.[8] The counterparties to these trades must reconcile the initiator's NOS submission within two days of its receipt by the MBSD. To reconcile an NOS submission, the counterparty must either provide the MBSD with an NOS submission that matches the one provided by the initiator, or send the MBSD a DK notice.[9] Reconciliation can also occur when the initiator rescinds its NOS submission before its counterparty provides a matching NOS. Currently, if either the initiator or the counterparty fails to reconcile an NOS submission within two days of its receipt by the MBSD, that member is subject to a late fee of $25.00 per day. As noted, the rule change, as approved, will shorten this two-day grace period to one day, and raise the fine from $25 to $150 per day.

According to the MBSD, the timely reconciliation of NOS submissions serves to minimize the risk that the MBSD might unnecessarily continue to hold and collect margin on a trade that has, unbeknownst to the MBSD, settled bilaterally. FICC contends that the timely reconciliation of NOS submissions is also important because, in the event of a member's insolvency, FICC must quickly and accurately determine which of the insolvent member's positions need to be liquidated.

### III. Discussion

Section 19(b)(2)(C) of the Act [10] directs the Commission to approve a self-regulatory organization's proposed rule change if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [11] requires, among other things, that the rules of a clearing agency registered with the Commission be designed to (i) Assure the safeguarding of securities and funds which are in the custody or control of the clearing agency, or for which it is responsible, (ii) foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and (iii) protect investors and the public interest.

The Commission concludes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[12] for several reasons. First, the proposed rule change helps protect the securities and funds in FICC's control, not only by encouraging members' timely compliance with the MBSD's risk management protocols, but also by enabling the MBSD to identify and begin liquidating an insolvent member's open trades more quickly. The latter could help the MBSD and its members avoid unnecessary losses in the event the MBSD must liquidate an insolvent member's open positions during a period of market disruption, when prices may be falling rapidly. Second, the proposed rule change fosters cooperation and coordination among those engaged in the settlement of securities transactions by encouraging members to provide the MBSD with reconciliation information more rapidly. Finally, the proposed change protects investors and the public interest by enhancing the MBSD's ability to manage an insolvent member's open positions, which should mitigate the risk that a member's insolvency could trigger instability in the broader financial system.

### IV. Conclusion

On the basis of the foregoing, the Commission concludes that the proposal is consistent with the requirements of the Act, particularly the requirements of Section 17A of the Act,[13] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 70232 (August 19, 2013), 78 FR 52598 (August 23, 2013) (SR–FICC–2013–08).

[4] Transactions may settle bilaterally (i.e., outside of the MBSD) for several reasons, including: (i) The transactions are ineligible for pool netting, (ii) the transactions involve a specified pool trade, or (iii) the parties elect to settle the trade bilaterally. The following types of transactions are all eligible for bilateral settlement: (i) Settlement-balance order, destined to-be announced (''TBA'') transactions; (ii) trade-for-trade TBA transactions; and (iii) specified pool trades.

[5] The MBSD must be notified when trades settle bilaterally because the trades are protected by the MBSD's trade guarantee. As a result, the MBSD will continue to hold initial margin and collect mark-to-market margin for these trades until it is notified that the trades have settled. *See generally* MBSD Rulebook, Rule 4.

[6] MBSD Rulebook, Rule 10, Section 2.

[7] *Id.*

[8] For purposes of the NOS process, clearance day is the day on which the seller delivers the securities to the buyer. Clearance day is generally on or after the contractual settlement day.

[9] A ''DK'' notice is a statement that the member ''does not know'' (i.e., denies the existence of) a transaction. MBSD Rulebook, Rule 1, p. 7.

[10] 15 U.S.C. 78s(b)(2)(C).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] *Id.*

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

FICC–2013–08) be and hereby is *approved*.[15]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23682 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70483; File No. SR–FINRA–2013–040]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Limited Waiver of the TRACE Professional Real-Time Data Display Fee Pilot

September 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on September 17, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730(c)(1)(A)(i) to extend the pilot program to November 7, 2014. The pilot program provides a limited waiver of the Professional Real-Time Data Display Fee of $60 to access Real-Time Trade Reporting and Compliance Engine (''TRACE'') transaction data in connection with certain free trials of data products.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Pursuant to FINRA Rule 7730(c)(1)(A), FINRA charges a Professional $60 per month, per display application per Data Set[5] of Real-Time[6] TRACE transaction data. The fee waiver pilot program in FINRA Rule 7730(c)(1)(A)(i) waives the $60 fee for one month for a Professional to access Real-Time TRACE transaction data in connection with a vendor's offer of a free trial of a data product that displays Real-Time TRACE transaction data.[7]

The fee waiver pilot program permits Professionals to access Real-Time TRACE transaction data on a free trial basis in connection, and concurrently, with the free trial of the vendor's product. The pilot program will expire on November 8, 2013.

FINRA proposes to extend the fee waiver pilot program approximately one year to November 7, 2014 to permit more time to assess the effectiveness of the pilot program. All other terms and conditions of the fee waiver pilot program would remain the same. The FINRA fee waiver would continue to be limited to one month (*i.e.,* a period not longer than 31 days). In addition, the FINRA fee waiver would continue to be available to not more than four Professionals associated with, employed by, or otherwise affiliated with a member, employer or other person during one free trial period.[8] As is currently the case, once the Real-Time Data Display Fee had been waived, a Professional and the member, employer or other person whom the Professional is associated with, employed by, or otherwise affiliated with would not be eligible for the FINRA fee waiver again in connection with another free trial offered by the same vendor until 12 months had lapsed from the last day of the prior fee waiver.[9] However, a Professional and the member, employer or other person with whom the Professional is associated or otherwise affiliated would be eligible for a FINRA fee waiver in connection with a free trial offered by a different vendor regarding its data products.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b-4(f)(2).

[5] FINRA makes Real-Time TRACE transaction data available in three Data Sets—the Corporate Bond Data Set, the Agency Data Set and the ABS Data Set. A fourth Data Set, the Rule 144A Data Set, will become available in 2014. *See* Securities Exchange Act Release No. 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (Order Approving File No. SR–FINRA–2013–029) (SEC approves a proposed rule change to disseminate transactions in TRACE-Eligible Securities that are effected pursuant to Rule 144A (17 CFR 239.144A) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and to establish the Rule 144A Data Set).

[6] Real-Time is defined in FINRA Rule 7730(f)(3).

[7] *See* Securities Exchange Act Release No. 68255 (November 19, 2012), 77 FR 70515 (November 26, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2012–049) (proposed rule change establishing the fee waiver pilot program).

In general, Real-Time TRACE transaction data is accessed not directly from FINRA but through a vendor, such as Bloomberg, L.P. and its Bloomberg display application, or other redistributors (collectively, ''vendors'') of financial market data. Under this arrangement, a Professional pays the vendor for the license to use the vendor's display application and if the display application displays Real-Time TRACE transaction data, the payment must include the applicable TRACE fee, which the vendor remits to FINRA. Vendors continually develop new products and offer free trials of such products to members and other Professional end users of market data. Such new products may display, among other data, Real-Time TRACE transaction data.

[8] The fee waiver pilot program is not applicable to Professionals associated with, employed by or otherwise affiliated with entities that obtain unlimited internal use of market data through any number of display applications by paying a flat fee of $7,500 (per month per Data Set) under Rule 7730(c)(1)(A) (''enterprise fee''). The enterprise fee structure is inconsistent with the limitation that the fee waiver apply to not more than four Professionals per entity per trial period.

[9] For example, if a Professional were granted a waiver for one month beginning on November 15, 2013, the Professional would not be eligible for another waiver in connection with another free trial offered by the same vendor until December 15, 2014.

[10] 15 U.S.C. 78*o*-3(b)(6).

FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,[11] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed extension of the pilot program, which encourages additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members, and may prevent fraudulent and manipulative acts and practices regarding pricing and valuations, for the protection of investors and the public interest.

FINRA believes that the extension of the pilot program providing for a limited waiver of the monthly fee per display application for access to Real-Time TRACE transaction data also results in reasonable fees and financial benefits from fee waivers that are equitably allocated. The financial benefit of the fee waiver would be available to all Professionals that accept an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials as previously described.

In addition, the financial benefit of the fee waiver would be available for a very limited period (*i.e.,* 31 days or less), such that Professionals not eligible for the fee waiver are not unfairly or inequitably affected. The proposed extension of the pilot period is reasonable because the waiver of a standard FINRA fee, and the financial benefit from such waiver, is of limited amount, duration (*i.e.,* one month) and application (*i.e.,* only four Professionals per member (or other end-user)), limited to concurrent free trials of data products offered by vendors, and subject to restrictions on re-use, and is being proposed to enhance a member's ability to access and test, among other things, the uses of Real-Time TRACE transaction data to determine if access to such Real-Time TRACE transaction data would further its business needs.

[11] 15 U.S.C. 78*o*-3(b)(5).

Finally, the proposed extension of the fee waiver pilot program does not unfairly discriminate between or among Professionals and members (or other end-users) in that the waiver would be available to any of such persons that accepts an offer to test a vendor data product that includes Real-Time TRACE transaction data on a free trial basis, subject to the limitations described above. The data vendor, rather than FINRA, would decide initially whether to offer a free trial of its data product to a particular Professional, member, or other end-user. FINRA's role is limited to refusing to extend a fee waiver to a particular person previously identified by the data vendor, due to the prohibition against extending multiple fee waivers to the same person.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed extension of the fee waiver pilot program, which is designed to encourage additional Professionals to test and use Real-Time TRACE transaction data, may promote more accurate and timely pricing and valuations of debt securities by members. Moreover, the extension of the pilot program would not place an unreasonable fee burden on members and other persons (*i.e.,* Professionals) that currently subscribe to receive Real-Time TRACE transaction data, nor confer an uncompetitive benefit to Professionals taking advantage of the pilot program, in that the fee waiver would be available for a very limited period (*i.e.,* 31 days or less), and the financial impact of such a pilot program on Professionals would be de minimis. In addition, the proposed rule change does not place a burden on competition in that the financial benefit of the fee waiver would be available in general to all Professionals. Any Professional that tests data products during a free trial would be eligible for and would benefit from the concurrent FINRA fee waiver, subject to the proscriptions against a Professional obtaining multiple free trials previously described.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f)(2) of Rule 19b-4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–040 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–FINRA–2013–040.* 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

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b-4(f)(2).

Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-*FINRA–2013–040* and should be submitted on or before October 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23683 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70489; File No. SR–NASDAQ–2013–120]**

## Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Chapter XV, at Section 2 Governing Pricing for NASDAQ Members Using the NASDAQ Options Market (''NOM'')

September 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on September 12, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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

NASDAQ is proposing changes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM'').

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. The Exchange proposes to (1) lower the Tier 6 volume threshold from 130,000 or more contracts per day in a month to 115,000 or more contracts per day in a month; (2) lower the Tier 7 volume threshold from 175,000 or more contracts per day in a month to 150,000 or more contracts per day in a month; and (3) include Non-Penny Pilot Options Customer and/or Professional volume that adds liquidity to compute the numerator in the calculation of percentage of total industry customer equity and ETF option average daily volume to qualify for certain tiers of the Customer or Professional Penny Pilot Options rebate program.

Today, the Exchange offers tiered Penny Pilot Options Rebates to Add Liquidity to Customers,[3] Professionals[4] and NOM Market Makers[5] and a $0.10 per contract rebate in Penny Pilot Options to liquidity added by Firms,[6] Non-NOM Market Makers[7] and Broker-Dealers.[8] With respect to Customers and Professionals, the Exchange pays Penny Pilot Options Rebates to Add Liquidity based on various criteria with rebates currently ranging from $0.25 to $0.48 per contract as follows:

| Monthly volume | Rebate to add liquidity |
|---|---|
| Tier 1 Participant adds Customer and/or Professional liquidity of up to 0.20% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month | $0.25 |
| Tier 2 Participant adds Customer and/or Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month | 0.40 |
| Tier 3 Participant adds Customer and/or Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month | 0.43 |
| Tier 4 Participant adds Customer and/or Professional liquidity of 0.5% or more of total industry customer equity and ETF option ADV contracts per day in a month | 0.45 |
| Tier 5 Participant adds (1) Customer and/or Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market | 0.42 |

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Customer'' applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48).

[4] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48)). All Professional orders shall be appropriately marked by Participants.

[5] The term ''NOM Market Maker'' is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. NOM Market Maker Rebates range from $0.25 to $0.38 per contract depending on various criteria.

[6] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[7] The term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[8] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

| Monthly volume | Rebate to add liquidity |
|---|---|
| Tier 6 Participant has Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity | 0.45 |
| Tier 7 Participant has Total Volume of 175,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity | 0.47 |
| Tier 8 Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) Participant has Total Volume of 200,000 or more contracts per day in a month, of which 70,000 or more contracts per day in a month must be Customer and/or Professional liquidity or (3) adds Customer and/or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month. | 0.48 |

With respect to Customers and Professionals, the Exchange proposes to modify the criteria for achieving Tiers 6 and 7, while continuing to offer rebates ranging from $0.25 to $0.48 per contract. Specifically, NASDAQ will change Tiers 6 and 7 as follows:

| Monthly volume | Rebate to add liquidity |
|---|---|
| Tier 6 Participant has Total Volume of 115,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity | $0.45 |
| Tier 7 Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity | 0.47 |

In addition, the Exchange proposes to include the volume denominated as ''Customer'' and/or ''Professional'' that adds liquidity in Non-Penny Pilot Options in the calculation of the above of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month. For example, a NOM Participants adds Customer and/or Professional liquidity of 25,000 contracts per day on Penny Pilot Options and 10,000 contracts per day in Non-Penny Pilot Options. Total industry customer equity and ETF option average daily volume is 10,000,000. Under the current program, the industry customer equity and ETF option average daily volume would be .25% (25,000/10,000,000). When the Non-Penny Pilot Options volume referenced above is included, the percentage increases to .35% (35,000/10,000,000). The Exchange believes the above proposal will incentivize NOM Participants to increase the liquidity on the NOM market place.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(4) of the Act,[10] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls as described in detail below.

The Exchange believes that it is reasonable, fair and equitable, and not unreasonably discriminatory to offer the opportunity to earn an additional Penny Pilot Options Customer Rebate to Add Liquidity by lowering the qualifications of Tiers 6 and 7, and by including Non-Penny Pilot Options volume that adds liquidity in the calculation of the total industry customer equity and ETF option ''ADV'' contracts per day in a month (the ''Proposal''). The proposal is reasonable because the added incentive encourages Participants to qualify for higher Customer or Professional Penny Pilot Options rebate tiers. Participants would be encouraged to add liquidity in both Penny Pilot and Non-Penny Options liquidity because the Proposal provides for lower tiers and additional volume to be counted toward earning rebates in Penny Pilot Options. Further, by amending the calculation of the total industry customer equity and ETF option ''ADV'' contracts per day in a month improves the incentives to add Customer and/or Professional liquidity on the Exchange for NOM Participants who would not otherwise benefit from the Total Volume qualification metric employed as part of Tiers 6 and 7. Total Volume is defined at Chapter XV, Section 2(1) at note b as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and/or Non-Penny Pilot Options which either adds or removes liquidity on NOM.

The Exchange believes that offering Customers and Professionals the continued opportunity to earn higher rebates by modifying its tiers is reasonable because incentivizing Participants to select the Exchange as a venue to post Customer and Professional liquidity will attract additional order flow to the benefit of all market participants. Today the Exchange also incentivizes NOM Market Makers to post liquidity by offering NOM Market Makers rebates, which also benefit market participants through increased order interaction. Firms, Non-NOM Market Makers and Broker-Dealers are also offered rebates under the current pricing structure.

The Exchange believes that continuing to pay Customers and Professionals tiered Rebates to Add Liquidity in Penny Pilot Options, as compared to other market participants, is equitable and not unfairly discriminatory because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professionals the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory because the Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

Penny Pilot Options. By offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow.

In addition, Participants may be unable to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume.[11] A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price.[12] Further, the Exchange initially established Professional pricing in order to ''. . . bring additional revenue to the Exchange.'' [13] The Exchange noted in the Professional Filing that it believes ''. . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs.'' [14] The Exchange also noted there that establishing separate pricing for a Professional, which ranges between that of a Customer and market maker, accomplishes this objective.[15] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers and NOM Market Makers, as discussed herein.[16] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory. The Exchange believes that continuing to offer NOM Market Makers the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers is equitable and not unfairly discriminatory because NOM Market Makers add value through continuous quoting [17] and a commitment of capital. Firms, Non-NOM Market Makers and Broker-Dealers would continue to be offered a $0.10 per contract Rebate to Add Liquidity in Penny Pilot Options, as is the case today.[18]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

Customers have traditionally been paid the highest rebates offered by options exchanges. The Exchange does not believe that continuing to provide Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates an undue burden on competition where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options.

The Exchange believes the proposed pricing incentives contribute to the overall health of the market and benefit all Participants willing to choose to transact options on NOM. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition.

The Exchange operates in a hyper competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send options order flow of all types to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange's belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to materially impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b-4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[11] Customer and Professional volume is aggregated for purposes of determining which rebate tier a Participant qualifies for with respect to the Professional Rebate to Add Liquidity in Penny Pilot Options.

[12] A Professional would be unable to determine the exact rebate that would be paid on a transaction by transaction basis with certainty until the end of a given month when all Customer and Professional volume is aggregated for purposes of determining which tier the Participant qualified for in a given month.

[13] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[14] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

[15] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066). The Exchange noted in this filing that it believes the role of the retail customer in the marketplace is distinct from that of the Professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

[16] The Fee for Removing Liquidity in Penny Pilot Options is $0.48 per contract for all market participants, except Customers and NOM Market Makers. Customers are assessed $0.45 per contract and NOM Market Makers would continue to be assessed $0.47 per contract.

[17] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[18] Similar to other market participants, Firms, Non-NOM Market Makers and Broker-Dealers have the opportunity to earn a higher Penny Pilot Options Rebate to Add Liquidity if they transact 15,000 contracts per day or more of Penny Pilot Options or Non-Penny Pilot Options liquidity in a given month. The volume requirement for Firms, Non-NOM Market Makers and Broker-Dealers to qualify for the higher Penny Pilot Options Rebate to Add Liquidity is less than is required to earn a Tier 1 Customer or Professional Rebate to Add Liquidity in Penny Pilot Options or a Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Option. The 15,000 contract threshold for Firms, Non-NOM Market Makers and Broker-Dealers to earn the Penny Pilot Options Rebate to Add Liquidity equates to approximately 0.12% of the industry customer equity and ETF volume.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–120 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–120. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–120, and should be submitted on or before October 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–23729 Filed 9–27–13; 8:45 am]

**BILLING CODE 8011–01–P**

[21] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 13768 and # 13769]**

### Colorado Disaster Number CO–00065

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4145–DR), dated 09/14/2013.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 09/11/2013 and continuing.

*Effective Date:* 09/20/2013.

*Physical Loan Application Deadline Date:* 11/14/2013.

*EIDL Loan Application Deadline Date:* 06/16/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Colorado, dated 09/14/2013 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties: (Physical Damage and Economic Injury Loans):*
Arapahoe; Logan.

*Contiguous Counties: (Economic Injury Loans Only):*
Colorado: Phillips; Sedgwick; Yuma.
Nebraska: Cheyenne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–23698 Filed 9–27–13; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 13768 and # 13769]**

### Colorado Disaster Number CO–00065

**AGENCY:** U.S. Small Business Administration.

ACTION≦ Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Colorado (FEMA–4145–DR), dated 09/14/2013.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 09/11/2013 and continuing.

*Effective Date:* 09/19/2013.

*Physical Loan Application Deadline Date:* 11/14/2013.

*EIDL Loan Application Deadline Date:* 06/16/2014.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Colorado, dated 09/14/2013 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties: (Physical Damage and Economic Injury Loans):* Clear Creek; El Paso; Jefferson.

*Contiguous Counties: (Economic Injury Loans Only):*
Colorado: Crowley; Douglas; Elbert; Fremont; Lincoln; Park; Pueblo; Summit; Teller.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2013–23697 Filed 9–27–13; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 8488]**

### 30-Day Notice of Proposed Information Collection: Application for a U.S. Passport

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to October 30, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* (202) 395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520, who may be reached on (202) 485–6510 or at *PPTFormsOfficer@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Application for a U.S. Passport.
- *OMB Control Number:* 1405–0004.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/S/PMO/PC).
- *Form Number:* DS–11.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 10,351,043 respondents per year.
- *Estimated Number of Responses:* 10,351,043 responses per year.
- *Average Time per Response:* 85 minutes per response.
- *Total Estimated Burden Time:* 14,663,977 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:*

The DS–11 solicits data necessary for Passport Services to issue a United States passport (book and/or card format) in the exercise of authorities granted to the Secretary of State in 22 United States Code (U.S.C.) Section 211a et seq. and Executive Order (E.O.) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. 1401–1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. Passport are at 22 CFR 51.20 through 51.28.

*Methodology:*

The information collected on the DS–11 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. Passport. Passport applicants can either download the DS–11 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed and executed at an acceptance facility or passport agency, and submitted with evidence of citizenship and identity.

Dated: September 10, 2013.

**Brenda S. Sprague,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2013–23738 Filed 9–27–13; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Erie and Genesee Counties, New York

**AGENCY:** Federal Highway Administration (FHWA), DOT; New York State Department of Transportation (NYSDOT).

**ACTION:** Revised notice of intent.

**SUMMARY:** The FHWA is issuing this revised notice to advise the public that FHWA and NYSDOT will not be preparing an Environmental Impact Statement (EIS) for the proposed project to improve or relocate the Williamsville Toll Barrier in the counties of Erie and Genesee, New York (NYSDOT Project Identification Number: 5528.28). A Notice of Intent to prepare an EIS was published in the **Federal Register** on February 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jonathan McDade, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127, or Michael A. Shamma, New York State Thruway Authority, 200 Southern Boulevard, P.O. Box 189, Albany, New York 12201–0189.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), and the New York State Thruway Authority (NYSTA), will not prepare an EIS as previously intended on a proposal to relocate or improve the Williamsville Toll Barrier in the Town of Amherst, Erie County, New York. The purpose of the project was to develop alternatives to address safety and operational concerns, relieve congestion, and address community concerns about air and noise pollution associated with the toll barrier. However, during the timeframe of the environmental studies, significant fiscal restraints, right of way takings, potential environmental impacts, and public controversy have significantly deteriorated the viability of the current project. In addition, new tolling technology, All Electronic Toll Collection (AETC) that is currently in the pilot testing stage for NYSTA, may reduce the lifespan of a new Toll Barrier from 50 years down to 10–15 years. This would reduce the benefit cost ratio to a point where it would not be a prudent financial investment. NYSTA has used relevant information from the environmental studies completed to date and prepared a feasibility

assessment on immediate and mid-term improvements to the current toll barrier that will improve operations, safety, and reduce congestion. Proposed immediate actions in the feasibility study will improve operations and safety, and mid-term improvements have the potential to address all capacity issues at the barrier today, as well as maintain viability of the toll plaza for the next 10 years. The improvements now being considered will not have a significant impact on the environment and will be progressed as Categorical Exclusion(s) or equivalent under the State Environmental Quality Review Process.

(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. 315; 23 CFR 771.123.

Issued on: September 23, 2013.

**Michael Canavan,**

*Chief, Operating Officer, Federal Highway Administration, Albany, New York .*

[FR Doc. 2013–23585 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No FMCSA–2011–0097]**

### Pilot Program on NAFTA Trucking Provisions

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audit (PASA) for Transportation and Cargo Solutions S de RL de CV (TRACSO) with U.S. Department of Transportation (USDOT) number 779973, which applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

**DATES:** Comments must be received on or before October 10, 2013.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0097 by any one of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

**FOR FURTHER INFORMATION CONTACT:** Carla Vagnini, FMCSA, North American Borders Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone (202) 366–3771 or email *carla.vagnini@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials. The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

*Submitting Comments*

If you submit a comment, please include the docket number (FMCSA–2011–0097), indicate the specific question to which each comment responds, 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. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and type ''FMCSA–2011–0097'' in the search box. Locate this document in the list and click on ''Comment Now!'' 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.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and type ''FMCSA–2011–0097'' in the search box and locate this document in the list. Next, click ''Open Docket Folder'' and click on the title of the document you wish to view. 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 DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday. Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

#### Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007). Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled

motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on June 18, 2013. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed the PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 all titled (''Successful Pre-Authorization Safety Audit (PASA) Information'') set out additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *FMCSA Register Number:* The number assigned to the Mexico-domiciled motor carrier's operating authority as found in the FMCSA Register.

E. *PASA Initiated:* The date the PASA was initiated.

F. *PASA Completed:* The date the PASA was completed.

G. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., [INSERT MX NUMBER]);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and Insurance public Web site at *http://li-public.fmcsa.dot.gov/*, and selecting FMCSA Register in the drop down menu.

I. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. *Passed Verification of 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item K above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR Part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory

areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

N. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; Driving and Parking Rules).

R. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal, if the inspection is passed successfully. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection at the time of the PASA decal as a result of a passed inspection.

T. *Number U.S. Vehicles Issued CVSA decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier that has completed the PASA.

TABLE 1

| Row number in Tables 2, 3 and 4 of the Appendix to today's notice | Name of carrier | USDOT No. |
|---|---|---|
| 1 ..... | Transportation and Cargo Solutions S de RL de CV. | 779973 |

TABLE 2—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 3 AND 4)

| Column A—Row Number | Column B—Name of Carrier | Column C—US DOT Number | Column D—FMCSA Register Number | Column E—PASA Initiated | Column F—PASA Completed | Col. G—PASA Results | Col. H—FMCSA Register | Col. I US Drivers | Col. J—US Vehicles |
|---|---|---|---|---|---|---|---|---|---|
| 1 ..... | Transportation and Cargo Solutions S de RL de CV. | 779973 | MX–347064 | 04/23/2013 | 06/18/2013 | Pass | MX–347064 | 4 | 7 |

TABLE 3—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 2 AND 4)

| Column A—Row Number | Column B—Name of Carrier | Column C—US DOT Number | Column D-FMCSA Register Number | Column K—Passed Verification of 5 Elements (Yes/No) | Column L—If No, Which Element Failed | Column M—Passed Phase 1 Factor 1 | Column N—Passed Phase 1 Factor 2 | Column O—Passed Phase 1 Factor 3 | Column P—Passed Phase 1 Factor 4 |
|---|---|---|---|---|---|---|---|---|---|
| 1 ..... | Transportation and Cargo Solutions S de RL de CV. | 779973 | MX–347064 | YES | N/A | YES | YES | YES | YES |

TABLE 4—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION AS OF SEPTEMBER 9, 2011 (SEE ALSO TABLES 2 AND 3)

| Column A—Row Number | Column B—Name of Carrier | Column C—US DOT Number | Column D—FMCSA Register Number | Column Q—Passed Phase I Factor 5 | Column R—Passed Phase I Factor 6 | Column S—Number US Vehicles inspected | Column T—Number US Vehicles issued CVSA decal | Column U—Controlled Substance Collection | Column V—Name of Controlled Substances and Alcohol Collection Facility |
|---|---|---|---|---|---|---|---|---|---|
| 1 ..... | Transportation and Cargo Solutions S de RL de CV. | 779973 | MX–347064 | YES | YES | 7 | 7 | US | Quest Diagnostic Laboratories |

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* For carriers that participated in the Agency's demonstration project that ended in 2009, copies of the previous PASA and compliance review, if conducted, are also posted. All documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, is also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced Web site.

The Agency acknowledges that through the PASA process it was determined that TRACSO had an affiliation not identified in the original application. This was noted during the Agency's vetting and documented as an attachment to the PASA. TRACSO officials submitted for the record a letter confirming the relationship with a U.S.-domiciled motor carrier, XIM Enterprises, LLC. The letter states XIM Enterprises LLC received their authority in January 2013, which was after TRACSO submitted their OP–1 (MX) application to participate in the Pilot Program. The letter further stated that XIM Enterprises LLC has never begun operations. It should be noted that TRACSO officials have since deactivated the US DOT number and operating authority for XIM Enterprises LLC. During its vetting of the application and the PASA, FMCSA confirmed that TRACSO did not establish or use the affiliated company to evade FMCSA regulations in continuing motor carrier operations, or for the purpose of avoiding or hiding previous non-compliance or safety problems.

TRACSO was issued a Certificate of Registration to operate wholly within the commercial zones and municipalities along the southern international border in September 2003 and had a safety audit conducted on its operations in the United States on October 16, 2003. The company passed the safety audit with no violations noted on the report.

During the PASA, the Agency found that TRACSO had deficiencies noted in its driver qualification file, as the files were missing complete employment applications and controlled substance and alcohol testing history from previous employers.

The PASA also found that on at least one occasion the motor carrier failed to require its driver to prepare and submit a record of duty status when it failed to meet each of the requirements of the 100 air-mile radius exemption. Finally, on at least one occasion the motor carrier failed to ensure that drivers do not drive a vehicle without the cargo being properly distributed and adequately secured. However, these issues, while noted as violations on the PASA, are not grounds for the motor carrier to fail the PASA.

On July 30, 2013, TRACSO provided a corrective action plan to ensure that the company had rectified the deficiencies found in its driver qualification records, records of duty status and cargo securement during the PASA.

Following the PASA, FMCSA scheduled a compliance review on TRACSO's OP–2 commercial zone operations because TRACSO had Safety Measurement System (SMS) alerts in both the Driver Fitness (99.2%) and Vehicle Maintenance (98.9%) Behavioral Analysis and Safety Improvement Categories (BASICs), as of the most recent 2-year period of data

ending on July 26, 2013. Of the 1,709 violations in the Driver Fitness BASIC, 1,695 involve the English Language Proficiency (ELP) of their drivers. The drivers approved for this pilot program completed ELP testing during the PASA.

Regarding the Vehicle Maintenance BASIC, the Agency notes that TRACSO will be using all 2013 model year vehicles in the program and the vehicles passed the inspections required to obtain a Commercial Vehicle Safety Alliance safety decal.

The compliance review began on April 23, 2013, and identified six violations: (1) 49 CFR § 382.401(c)(6)(iii)—Failing to maintain semi-annual laboratory statistical summaries of urinalysis required by 49 CFR § 40.111(a); (2) 49 CFR § 390.15(b)(1)—Failing to keep an accident register in the form and manner prescribed; (3) 49 CFR 391.11(b)(2)/391.11(a)—Using a driver unable to read and/or speak the English language; (4) 49 CFR 391.21(a)—Using a driver who has not completed and furnished an employment application; (5) 49 CFR 391.23(e)(1)—Failing to investigate the driver's alcohol and controlled substances history for the previous 3 years; and (6) 49 CFR 395.8(a)—Failing to require driver to make a record of duty status. No acute violations were discovered, and the violations of critical regulations did not rise to the level of critical violation. Thus the carrier received a ''Satisfactory'' safety rating upon the conclusion of the compliance review.

The Agency provided TRACSO with recommendations for correcting the violations. To address the high Driver Fitness BASIC, carrier officials stated they have scheduled English proficiency training for their drivers, and will continue to test and monitor their drivers' English language proficiency. Additionally, to address the high Vehicle Maintenance BASIC, carrier officials stated they will start a training program for their drivers on driver vehicle inspections so they can identify problems with vehicles and have them repaired before roadside inspections.

The Agency will monitor the safety of TRACSO through SMS and take action, if appropriate. TRACSO is currently a hazardous materials carrier (reg. # 062212551016U) registered with the Pipeline and Hazardous Materials Safety Agency and reports the transportation of three types of hazardous materials on its most recent MCS–150 filing in May 2013. TRACSO will be subject to the terms and conditions of the pilot program and during the PASA process FMCSA confirmed that TRACSO will not transport placardable hazardous materials under the upcoming OP–1MX authority in the pilot program.

Based on TRACSO's safety record and corrective action plan, FMCSA will proceed in issuing provisional operating authority for participation in the pilot program.

*Request for Comments*

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued on: September 18, 2013.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2013–23760 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2013–0020]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 16 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective September 30, 2013. The exemptions expire on September 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

#### Background

On June 26, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 16 individuals and requested comments from the public (78 FR 38439). The public comment period closed on July 26, 2013, and two comments were received.

FMCSA has evaluated the eligibility of the 16 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

#### Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher

rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 16 applicants have had ITDM over a range of 1 to 28 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 26, 2013, **Federal Register** notice and they will not be repeated in this notice.

## Discussion of Comments

FMCSA received two comments in this proceeding. The comments are considered and discussed below.

Laurie Susan Palmer expressed concern regarding the new A1C testing regulations.

John D. Heffington requested information regarding the new A1C testing regulations.

## Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

## Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts Tyler A. Benjamin (AL), Larry K. Brindle (KS), James D. Damske (MA), Manuel M. Fabela, Jr. (CA), Ryan L. Guffey (IL), Richard B. Harvey (CA), Donald F. Kurzejewski (PA), Joshua O. Lilly (VA), Steven C. Lundberg (IA), Frank D. Marcou, Jr. (VT), Roger D. Mott (IA), Bernard K. Nixon (FL), Thomas P. Olson (WI), Steven T. Vanderburg (NC), John P. Washington (NJ), and Christopher J. Wisner (MD) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 20, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2013–23766 Filed 9–27–13; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Federal Highway Administration

**[Docket No. FTA–2013–0029]**

## Proposed Policy Guidance on Metropolitan Planning Organization Representation

**AGENCY:** Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), DOT.

**ACTION:** Proposed policy guidance; request for comments.

**SUMMARY:** The FTA and FHWA are jointly issuing this proposed guidance on implementation of provisions of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, that require representation by providers of public transportation in each metropolitan planning organization (MPO) that serves a transportation management area (TMA) no later than October 1, 2014. The purpose of this guidance is to assist MPOs and providers of public transportation in complying with this new requirement.

**DATES:** Comments must be received by October 30, 2013. Any comments

received beyond this deadline will be considered to the extent practicable.

**ADDRESSES:** *Comments.* You may submit comments identified by the docket number (FTA–2013–0029) by any of the following methods:

*Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

*DOT Electronic Docket:* Go to *http://dms.dot.gov* and follow the instructions for submitting comments.

*U.S. Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

*Hand Delivery or Courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, Southeast, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Fax:* 202–493–2251.

*Instructions:* You must include the agency names (Federal Transit Administration and Federal Highway Administration) and docket number (FTA–2013–0029) for this notice at the beginning of your comments. You must submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA and FHWA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments may wish to consider using an express mail firm to ensure prompt filing of any submissions not filed electronically or by hand. All comments received will be posted, without change and including any personal information provided, to *http://www.regulations.gov,* where they will be available to Internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477. For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Dwayne Weeks, FTA Office of Planning and Environment, telephone (202) 366–4033 or *Dwayne.Weeks@dot.gov;* or Harlan Miller, FHWA Office of Planning, telephone (202) 366–0847 or *Harlan.Miller@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. *Introduction*

The FTA and FHWA are jointly issuing this proposed policy guidance on the implementation of 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B), which require representation by providers of public transportation in each MPO that serves an area designated as a TMA. The FTA and FHWA anticipate issuing a joint notice of proposed rulemaking to amend 23 CFR part 450 to implement 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B) as amended by sections 1201 and 20005 of MAP–21. These United States Code sections now require representation by providers of public transportation in each MPO that serves an area designated as a TMA. A TMA is defined as an urbanized area with a population of over 200,000 individuals as determined by the 2010 census, or an urbanized area with a population of fewer than 200,000 individuals that is designated as a TMA by the request of the Governor and the MPO designated for the area.[1] As of the date of this guidance, of the 384 MPOs throughout the Nation, 184 MPOs serve an area designated as a TMA.

The FTA conducted an On-Line Dialogue on this requirement from March 5 through March 29, 2013. Through this forum, FTA received input from MPOs, local elected officials, transit agencies, and the general public, with over 3,000 visits to the Web site. Over 100 ideas were submitted from 340 registered users who also provided hundreds of comments and votes on these ideas. Participants discussed the complex nature of MPOs and the advantages of providing flexibility for MPOs and transit providers to decide locally how to include representation by providers of public transportation in the MPO.

To increase the accountability and transparency of the Federal-aid highway and Federal transit programs and to improve project decision-making through performance-based planning and programming, MAP–21 establishes a performance management framework. The MAP–21 requires FHWA to establish, through a separate rulemaking, performance measures and standards to be used by States to assess the condition of the pavements and bridges, serious injuries and fatalities, performance of the Interstate System and National Highway System, traffic congestion, on-road mobile source emissions, and freight movement on the Interstate System.[2] The MAP–21 also requires FTA to establish, through separate rulemakings, state of good repair and safety performance measures, and requires each provider of public transportation to establish performance targets in relation to these performance measures.[3]

To ensure consistency, an MPO must coordinate to the maximum extent practicable with the State and providers of public transportation to establish performance targets for the metropolitan planning area that address these performance measures.[4] An MPO must describe in its metropolitan transportation plans the performance measures and targets used to assess the performance of its transportation system.[5] Statewide and metropolitan transportation improvement programs (STIPs and TIPs) must include, to the maximum extent practicable, a description of the anticipated effect of the program toward achieving the performance targets established in the statewide or metropolitan transportation plan, linking investment priorities and the highway and transit performance targets.[6] These changes to the planning process will be addressed in FHWA and FTA's anticipated joint rulemaking amending 23 CFR part 450.

As part of its performance management framework, MAP–21 assigns MPOs the new transit related responsibilities described above, i.e., to establish performance targets with respect to transit state of good repair and transit safety and to address these targets in their transportation plans and TIPs. Representation by providers of public transportation in each MPO that serves a TMA will better enable the MPO to define performance targets and to develop plans and TIPs that support an intermodal transportation system for the metropolitan area. Including representation by providers of public transportation in each MPO that serves an area designated as a TMA is an essential element of MAP–21's performance management framework and will support the successful implementation of a performance-based approach to transportation decisionmaking.

The FTA and FHWA seek comment on the following proposals in this guidance: the determination of specifically designated representatives, the eligibility of representatives of providers of public transportation to

[1] 23 U.S.C. 134(k)(1); 49 U.S.C. 5303(k)(1).

[2] 23 U.S.C. 150(c).

[3] 49 U.S.C. 5326(b), (c), 5329(b), (d).

[4] 23 U.S.C. 134(h)(2); 49 U.S.C. 5303(h)(2).

[5] 23 U.S.C. 134(i)(2)(B); 49 U.S.C. 5303(i)(2)(B).

[6] 23 U.S.C. 134(j)(2)(D); 49 U.S.C. 5303(i)(2)(D) (TIPs) and 23 U.S.C. 135(g)(4); 49 U.S.C. 5304(g)(4) (STIPs).

serve as specifically designated representatives, and the cooperative process to select a specifically designated representative in MPOs with multiple providers of public transportation. There is wide variation in transit agency representation among MPOs and in the governance structure of MPOs throughout the country. To accommodate the many existing models of transit agency representation on MPO boards, this proposed guidance proposes flexible approaches for MPOs and providers of public transportation to work together to meet this requirement.

## II. Specifically Designated Representatives

MAP–21 requires that by October 1, 2014, MPOs that serve an area designated as a TMA must include local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and appropriate State officials.[7] The requirement to include ''representation by providers of public transportation'' is a new requirement under MAP–21. The FHWA and FTA construe that the intent of this provision is that representatives of providers of public transportation, once designated, will have equal decision-making rights and authorities as other members listed in 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B) that are on the policy board of an MPO that serves a TMA. This expectation reflects the long-standing position of FHWA and FTA with respect to statutorily required MPO board members.[8]

A public transportation representative on an MPO board is referred to herein as the ''specifically designated representative.'' A specifically designated representative should be an elected official or a direct representative employed by the agency being represented, such as a member of a public transportation provider's board of directors, or a senior transit agency official like a chief executive officer or a general manager.

## III. Providers of Public Transportation

This guidance proposes that only representation by providers of public transportation that operate in a TMA and are direct recipients[9] of the Urbanized Area Formula Funding program[10] will satisfy 23 U.S.C. 134(d)(2)(B) and 49 U.S.C. 5303(d)(2)(B).

## IV. Process for the Selection of Specifically Designated Representatives

The FTA and FHWA's Metropolitan Transportation Planning rule at 23 CFR 450.314 provides for metropolitan planning agreements in which MPOs, States, and providers of public transportation cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. This guidance proposes that MPOs that serve an area designated as a TMA should cooperate with providers of public transportation and the State to amend their metropolitan planning agreements to include the cooperative process for selecting the specifically designated representative(s) for inclusion on the MPO board and for identifying the representative's role and responsibilities.

## V. Role of the Specifically Designated Representative

To the extent that an MPO has bylaws, the MPO should, in consultation with transit providers in the TMA, develop bylaws that describe the establishment, roles, and responsibilities of the specifically designated representative. These bylaws should explain the process by which the specifically designated representative will identify transit-related issues for consideration by the full MPO policy board and verify that transit priorities are considered in planning products to be adopted by the MPO. In TMAs with multiple providers of public transportation, the bylaws also should outline how the specifically designated representative(s) will consider the needs of all eligible[11] providers of public transportation and address issues that are relevant to the responsibilities of the MPO.

## VI. Restructuring MPOs To Include Representation by Providers of Public Transportation

Title 23 U.S.C. 134(d)(5)(B) and 49 U.S.C. 5303(d)(5)(B) provide that an MPO may be restructured to meet MAP–21's representation requirements without having to secure the agreement of the Governor and units of general purpose government as part of a redesignation.

There are multiple providers of public transportation within most TMAs. In large MPOs that include numerous municipal jurisdictions and multiple providers of public transportation, FTA and FHWA expect that it would not be practical to allocate separate representation to each provider of public transportation. Consequently, this guidance proposes that an MPO that serves an area designated as a TMA that has multiple providers of public transportation should cooperate[12] with the eligible providers to determine how the MPO will include representation by providers of public transportation.

There are various approaches to meeting this requirement. For example, an MPO may allocate a single board position to eligible providers of public transportation collectively, providing that one specifically designated representative must be agreed upon through the cooperative process. The requirement for specifically designated representation might also be met by rotating the board position among all eligible providers or by providing all eligible providers with proportional representation. However the representation is ultimately designated, the MPO should provide specifics of the designation in its bylaws, to the extent it has bylaws.

Apart from the requirement for specifically designated representation on the MPO's board, an MPO also may allow for transit representation on policy or technical committees. Eligible providers of public transportation not given decision-making rights on the MPO's board may hold positions on policy or technical committees.

The FHWA and FTA encourage MPOs, State Departments of Transportation, local stakeholders, and transit providers to take this opportunity to determine the most effective governance and institutional arrangements to best serve the interests of the metropolitan planning area.

**Peter Rogoff,**

*FTA Administrator.*

**Victor M. Mendez,**

*FHWA Administrator.*

[FR Doc. 2013–23780 Filed 9–27–13; 8:45 am]

BILLING CODE P

[7] 23 U.S.C. 134(d)(2); 49 U.S.C. 5303(d)(2).

[8] While this guidance specifically addresses the new requirement for representation by providers of public transportation, all MPOs that serve a TMA must consist of local elected officials; officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and appropriate State officials by October 1, 2014. 23 U.S.C. 134(d)(2); 49 U.S.C. 5303(d)(2). Only those MPOs acting pursuant to authority created under State law that was in effect on December 18, 1991, that meet the requirements of 23 U.S.C. 134(d)(3) and 49 U.S.C. 5303(d)(3), are exempt.

[9] A direct recipient is defined as a public entity that is legally eligible under Federal transit law to apply for and receive grants directly from FTA.

[10] 49 U.S.C. 5307.

[11] Eligible transit agencies are those that are direct recipients of the Urbanized Area Formula Funding program, 49 U.S.C. 5307, and operate in a TMA.

[12] Cooperation means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective. 23 CFR 450.104.

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2013 0109]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel HOOKED FOR REEL; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before October 30, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD–2013–0109. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel HOOKED FOR REEL is:

INTENDED COMMERCIAL USE OF VESSEL: Sport fishing charters

GEOGRAPHIC REGION: Michigan, Ohio, Pennsylvania, New York

The complete application is given in DOT docket MARAD–2013–0109 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: September 24, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–23734 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2013 0110]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GENESIS; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before October 30, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD–2013–0110. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel GENESIS is:

INTENDED COMMERCIAL USE OF VESSEL: ''To charter in New York Harbor, as in coastwise charters''

GEOGRAPHIC REGION: ''New York, New Jersey''

The complete application is given in DOT docket MARAD–2013–0110 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: September 24, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–23735 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0144; Notice 1]**

### General Motors, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** General Motors, LLC (GM) [1] has determined that certain model year 2013 Chevrolet Malibu passenger cars manufactured between June 21, 2011 and July 24, 2012, do not fully comply with paragraphs S3.1.4.1(a) and (b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect.* GM has filed an appropriate report dated August 3, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

**DATES:** October 30, 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 Deliver:* 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 1–202–493–2251.

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. GM's Petition

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM 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 GM'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.

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, these provisions only apply to the subject 23,910 [2] 2013 Chevrolet Malibu passenger cars that GM no longer controlled at the time it determined that the noncompliance existed.

### II. Vehicles Involved

Affected are approximately 23,910 model year 2013 Chevrolet Malibu passenger cars manufactured between June 21, 2011 and July 24, 2012.

### III. Noncompliance

GM explains that the noncompliance is that in the subject vehicles, because the primary shift lever position backlight in the console shift indicator can fail to illuminate, the transmission shift position selected in relation to the other gears is not always provided under the required conditions specified in S3.1.4.1 (a) and (b).

### IV. Rule Text

Paragraph S3.1.4.1 (a) and (b) of FMVSS No. 102 specifically states:

S3.1.4 Identification of shift positions and of shift position sequence.

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.

### V. Summary Of GM's Analysis and Arguments

GM stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. There is minimal risk that the operator will shift the vehicle out of park without being aware that the transmission shift position sequence display is not illuminated since the condition can only be initiated at key-up (engine crank). The condition cannot be initiated while driving.

2. The condition corrects on the next ignition cycle. Throughout our investigation it never repeated on consecutive ignition cycles.

[1] General Motors, LLC, is a manufacturer of motor vehicles and is registered under the laws of the state of Michigan.

[2] GM's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt GM as a motor vehicle manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the affected 2013 Chevrolet Malibu passenger cars. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after GM notified them that the subject noncompliance existed.

3. The gear selected is always provided in a redundant display located in the instrument panel (IP) cluster.

a. The up-level IP cluster is utilized in 85% of the vehicle production and displays the gear selected in relation to the other gears for 3 seconds whenever the vehicle is shifted. After 3 seconds the IP cluster displays only the gear selected.

b. 15% of production has the base IP cluster which displays only the gear selected.

4. The system is designed to minimize the risk that the operator will shift to an unintended gear.

a. When shifting, a secondary motion (button push on shifter) is required to help prevent mis-shift. A button on the shift lever must be depressed when shifting from:

i. PARK to any other gear:

ii. REVERSE to any other gear: or

iii. DRIVE to PARK or REVERSE

b. NEUTRAL gear selection from DRIVE does not require a secondary motion (button push on shifter), making location of NEUTRAL easier in a panic situation.

c. The gear selected is provided as a secondary display in the IP cluster and the shifter in the subject vehicle utilizes a linear shift pattern (used on US vehicles for more than 50 years). Since the relationship between PARK, REVERSE, NEUTRAL and DRIVE is well understood by the driving public, this should assist the operator in determining the shift lever's position in relationship to the other gear positions even when not illuminated.

d. Brake Transmission Shift Interlock (BTSI) helps to assure the driver is not caught unaware when shifting from PARK since the operator must first apply the brake.

e. On the subject vehicles miss-shifting is prevented while the vehicles are in motion. At speeds above 10 MPH, shifting from DRIVE to REVERSE or PARK; or shifting from REVERSE to PARK or DRIVE, is electronically inhibited.

5. The frequency of the condition occurring is rare and random.

a. As of 25 July 2012, there were only ten reported incidents which occurred on seven of 285 captured test fleet (CTF) vehicles. The condition was reported twice on two of the CTF vehicles and did not occur on consecutive ignition cycles.

b. During the investigation, it took more than a week of testing during which approximately 1000 ignition cycles were conducted on each of four CTF vehicles reported to have the condition in order to recreate the occurrence.

c. Warranty claims as of 25 July 2012

i. US Warranty 3 of 8,573 vehicles

ii. China Warranty 2 of 11,872 vehicles

iii. Korea Warranty 3 of 4,968 vehicles

d. None of the Warranty claims or CTF reports indicated that the operator had experienced a mis-shift condition.

e. No claims were discovered related to injury or crash.

f. As of August 1, 2012, GM found no Vehicle Owner's Questionnaires (VOQs) resulting from the subject condition during its search of the NHTSA database.

6. GM stated its belief that NHTSA granted a similar petition in the past.

GM has additionally informed NHTSA that it has corrected the noncompliance so that all future production will comply with FMVSS No. 102.

In summation, GM believes that the described noncompliance of the subject 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.

**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. 2013–23663 Filed 9–27–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Fiscal Service

### Proposed Collection: Comment Request for Voluntary Customer Satisfaction Surveys

**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 Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Customer Satisfaction Survey.

**DATES:** Written comments should be received on or before November 30, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Fiscal Service, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Voluntary Customer Satisfaction Survey to Implement Executive Order 12862

*OMB Number:* 1535–0122

*Abstract:* The information collected from various surveys conducted over the course of the extension period will be used to improve customer service.

*Current Actions:* None

*Type of Review:* Extension

*Affected Public:* Individuals

*Estimated Number of Respondents:* 7,000

*Estimated Time Per Respondent:* 7 minutes.

*Estimated Total Annual Burden Hours:* 876

*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.

Date: September 25, 2013.

**Bruce A. Sharp,**

*Bureau Clearance Officer.*

[FR Doc. 2013–23754 Filed 9–27–13; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–120616–03(TD 9346 Final Regulations and Removal of Temporary Regulations)]**

### Proposed Collection: Comment Request for Regulation Project

**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 an existing final regulation, REG–120616–03 (TD 9346), Entry of Taxable Fuel, (§§ 48.4081–1) and 48.4081–3).

**DATES:** Written comments should be received on or before November 29, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette 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 regulation should be directed to Sara Covington, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Sara.L.Covington@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Entry of Taxable Fuel.

*OMB Number:* 1545–1897.

*Regulation Project Number:* REG–120616–03 (T.D. 9346 Final Regulations and Removal of Temporary Regulations).

*Abstract:* The regulation imposes joint and several liability on the importer of record for the tax imposed on the entry of taxable fuel into the U.S. and revises definition of ''enterer''.

*Current Actions:* This is a Final Regulation and Removal of Temporary Regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 1,125.

*Estimated Time Per Respondent:* 1 hour 25 minutes.

*Estimated Total Annual Burden Hours:* 281.

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 11, 2013.

**Allan Hopkins,**

*IRS Tax Analyst.*

[FR Doc. 2013–23546 Filed 9–27–13; 8:45 am]

BILLING CODE 4830–01–P

# FEDERAL REGISTER

Vol. 78 Monday,

No. 189 September 30, 2013


Part II

## Department of the Interior

Fish & Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Rufa Red Knot (*Calidris canutus rufa*); Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R5–ES–2013–0097; 4500030113]**

**RIN 1018–AY17**

## Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Rufa Red Knot (*Calidris canutus rufa*)

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose to list the rufa red knot (*Calidris canutus rufa*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife.

**DATES:** We will accept all comments received or postmarked on or before November 29, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 14, 2013.

**ADDRESSES:** *Document availability:* You may obtain copies of the proposed rule and its four supplemental documents on the Internet at *http://www.regulations.gov* at Docket Number FWS–R5–ES–2013–0097, or by mail from the New Jersey Field Office (see **FOR FURTHER INFORMATION CONTACT**).

*Comment submission:* You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R5–ES–2013–0097, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2013–0097; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, Virginia 22203.

We request that you send comments only by the methods described above. We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the *Public Comments* section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Eric Schrading, Acting Field Supervisor, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Building D, Pleasantville, New Jersey 08232, by telephone 609–383–3938 or by facsimile 609–646–0352. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule.* Under the Act, if a species is determined to be endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can be completed only by issuing a rule.

This rule proposes listing the rufa red knot (*Calidris canutus rufa*) as a threatened species. The rufa red knot is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation has been precluded by other higher priority listing activities. This rule reassesses all available information regarding status of and threats to the rufa red knot. We will also publish a proposal to designate critical habitat for the rufa red knot under the Act in the near future.

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

We have determined that the rufa red knot is threatened due to loss of both breeding and nonbreeding habitat; potential for disruption of natural predator cycles on the breeding grounds; reduced prey availability throughout the nonbreeding range; and increasing frequency and severity of asynchronies (''mismatches'') in the timing of the birds' annual migratory cycle relative to favorable food and weather conditions.

*We will seek peer review.* We will seek comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

### Information Requested

*Public Comments*

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The rufa red knot's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Genetic, morphological, chemical, geolocator, telemetry, survey (e.g., resightings of marked birds), or other data that clarify the distribution of *Calidris canutus rufa* versus *C.c. roselaari* wintering and migration areas, including the subspecies compositions of those *C. canutus* that occur from southern Mexico to the Caribbean and Pacific coasts of South America.

(6) Information regarding intra- and inter-annual red knot movements within and between the Southeast United States-Caribbean and the Northwest Gulf of Mexico wintering regions, or other information that helps to clarify their geographic limits and degree of connectivity.

(7) Information that helps clarify the geographic extent of the rufa red knot's breeding range, and the extent to which rufa red knots from different wintering areas interbreed, as well as the geographic extent of the *Calidris canutus islandica* breeding range.

(8) Data regarding rates of rufa red knot reproductive success.

(9) Information regarding habitat loss or predation in rufa red knot breeding areas.

(10) Information regarding important rufa red knot stopover areas, including inland areas (such as the Mississippi Valley, Great Lakes, and Great Plains). We particularly seek information on the frequency, timing, and duration of use; numbers of birds; habitat and prey characteristics; foraging and roosting habits; and any threats associated with such areas.

(11) Data that support or refute the concept that juvenile rufa red knots at least partially segregate from adults during the nonbreeding seasons. We particularly seek information on juvenile wintering and migration locations; frequency, timing, and duration of juvenile use; numbers of juveniles and adults in these areas; juvenile habitat and prey characteristics; juvenile foraging and roosting habits; juvenile survival rates; and any threats associated with these areas.

(12) Data that clarify the degree of rufa red knot site fidelity to breeding locations, wintering regions, or migration stopover sites.

(13) Data regarding the percentage of rufa red knots that do not use Delaware Bay as a spring stopover site.

(14) Data regarding rufa red knot use of the Caribbean. We particularly seek information on the frequency, timing, and duration of use; numbers of birds; habitat and prey characteristics; foraging and roosting habits; and any threats associated with areas of red knot use in the Caribbean.

(15) Data regarding red knot use of wrack material as a microhabitat for foraging or roosting.

(16) Information regarding the frequency and severity of the threats to red knots (e.g., documented mortality levels from disease, harmful algal blooms, contaminants, oil spills, wind turbines), their habitats (e.g., effects of sea level rise, development, aquaculture), or their food resources (e.g., harvest of marine resources, climate change) outside the United States.

(17) Information regarding legal and illegal harvest (i.e., hunting or poaching) rates and trends in nonbreeding areas and the effects of harvest on the red knot.

(18) Information regarding non-U.S. laws, regulations, or policies relevant to the regulation of red knot hunting; classification of the red knot as a protected species; protection of red knot habitats; or threats to the red knot (e.g., to address the data gaps identified under Summary of Factors Affecting the Species).

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Jersey Field Office (*http://www.fws.gov/northeast/njfieldoffice/*) (see **FOR FURTHER INFORMATION CONTACT**).

*Public Hearings*

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the New Jersey Field Office at 609–383–3938, as soon as possible. To allow sufficient time to process requests, please call no later than 1 week before any scheduled hearing date. Information regarding this proposed rule is available in alternative formats upon request.

*Peer Review*

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we have sought the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the red knot's biology, habitat, or threats, which will inform our determination. We invite comment from the peer reviewers during this public comment period.

**Previous Federal Action**

Comprehensive information regarding previous federal actions relevant to the proposed listing of the rufa red knot is available as a supplemental document (''Previous Federal Actions'') on the Internet at *http://www.regulations.gov* (Docket No. FWS–R5–ES–2013–0097; see **ADDRESSES** section for further access instructions).

## Background

*Species Information*

Comprehensive information regarding the rufa red knot's taxonomy, distribution, life history, habitat, and diet, as well as its historical and current abundance, is available as a supplemental document (''Rufa Red Knot Ecology and Abundance'') on the Internet at *http://www.regulations.gov* (Docket No. FWS–R5–ES–2013–0097; see **ADDRESSES** section for further access instructions). A brief summary is provided here.

The rufa red knot (*Calidris canutus rufa*) is a medium-sized shorebird about 9 to 11 inches (in) (23 to 28 centimeters (cm)) in length. (Throughout this document, ''rufa red knot,'' ''red knot,'' and ''knot'' are used interchangeably to refer to the *rufa* subspecies. ''*Calidris canutus*'' and ''*C. canutus*'' are used to refer to the species as a whole or to birds of unknown subspecies. References to other particular subspecies are so indicated.) The red knot migrates annually between its breeding grounds in the Canadian Arctic and several wintering regions, including the Southeast United States (Southeast), the Northeast Gulf of Mexico, northern Brazil, and Tierra del Fuego at the southern tip of South America. During both the northbound (spring) and southbound (fall) migrations, red knots use key staging and stopover areas to rest and feed.

Taxonomy

*Calidris canutus* is classified in the Class Aves, Order Charadriiformes, Family Scolopacidae, Subfamily Scolopacinae (American Ornithologists Union (AOU) 2012a). Six subspecies are recognized, each with distinctive morphological traits (i.e., body size and plumage characteristics), migration routes, and annual cycles. Each subspecies is believed to occupy a distinct breeding area in various parts of the Arctic (Buehler and Baker 2005, pp. 498–499; Tomkovich 2001, pp. 259–262; Piersma and Baker 2000, p. 109; Piersma and Davidson 1992, p. 191; Tomkovich 1992, pp. 20–22), but some subspecies overlap in certain wintering and migration areas (Conservation of Arctic Flora and Fauna (CAFF) 2010, p. 33).

*Calidris canutus canutus, C.c. piersma,* and *C.c. rogersi* do not occur in North America. The subspecies *C.c. islandica* breeds in the northeastern Canadian High Arctic and Greenland, migrates through Iceland and Norway, and winters in western Europe (Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2007, p. 4). *Calidris c. rufa* breeds in the central Canadian Arctic (just south of the *C.c. islandica* breeding grounds) and winters along the Atlantic coast and the Gulf of Mexico coast (Gulf coast) of North America, in the Caribbean, and along the north and southeast coasts of South America including the island of Tierra del Fuego at the southern tip of Argentina and Chile (see supplemental document—Rufa Red Knot Ecology and Abundance—figures 1 and 2).

Subspecies *Calidris canutus roselaari* breeds in western Alaska and on Wrangel Island, Russia (Carmona *et al.* in press; Buehler and Baker 2005, p. 498). Wintering areas for *C.c. roselaari* are poorly known (Harrington 2001, p. 5). In the past, *C. canutus* wintering along the northern coast of Brazil, the Gulf coasts of Texas and Florida, and the southeast Atlantic coast of the United States have sometimes been attributed to the *roselaari* subspecies. However, based on new morphological evidence, resightings of marked birds, and results from geolocators (light-sensitive tracking devices), *C.c. roselaari* is now thought to be largely or wholly confined to the Pacific coast of the Americas during migration and in winter (Carmona *et al.* in press; Buchanan *et al.* 2011, p. 97; USFWS 2011a, pp. 305–306; Buchanan *et al.* 2010, p. 41; Soto-Montoya *et al.* 2009, p. 191; Niles *et al.* 2008, pp. 131–133; Tomkovich and Dondua 2008, p. 102). Although *C.c. roselaari* is generally considered to occur on the Pacific coast, a few *C. canutus* movements have recently been documented between Texas and the Pacific coast during spring migration (Carmona *et al.* in press). Despite a number of population-wide morphological differences (U.S. Fish and Wildlife Service (USFWS) 2011a, p. 305), the *rufa* and *roselaari* subspecies cannot be distinguished in the field (D. Newstead pers. comm. September 14, 2012). The subspecies composition of Pacific-wintering *C. canutus* from central Mexico to Chile is unknown.

Pursuant to the definitions in section 3 of the Act, ''the term species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Based on the information in the supplemental document Rufa Red Knot Ecology and Abundance, the Service accepts the characterization of *Calidris canutus rufa* as a subspecies because each recognized subspecies is believed to occupy separate breeding areas, in addition to having morphological and behavioral character differences. Therefore, we find that *C.c. rufa* is a valid taxon that qualifies as a listable entity under the Act.

Breeding

Based on estimated survival rates for a stable population, few red knots live for more than about 7 years (Niles *et al.* 2008, p. 28). Age of first breeding is uncertain but for most birds is probably at least 2 years (Harrington 2001, p. 21). Red knots generally nest in dry, slightly elevated tundra locations, often on windswept slopes with little vegetation. Breeding territories are located inland, but near arctic coasts, and foraging areas are located near nest sites in freshwater wetlands (Niles *et al.* 2008, p. 27; Harrington 2001, p. 8). On the breeding grounds, the red knot's diet consists mostly of terrestrial invertebrates such as insects (Harrington 2001, p. 11). Breeding occurs in June (Niles *et al.* 2008, pp. 25–26). Breeding success of High Arctic shorebirds such as *Calidris canutus* varies dramatically among years in a somewhat cyclical manner. Two main factors seem to be responsible for this annual variation: weather that affects nesting conditions and food availability (see Summary of Factors Affecting the Species—Factor E—Asynchronies) and the abundance of arctic lemmings (*Dicrostonyx torquatus* and *Lemmus sibericus*) that affects predation rates (see Summary of Factors Affecting the Species—Factor C—Predation—Breeding).

Wintering

In this document, ''winter'' is used to refer to the nonbreeding period of the red knot life cycle when the birds are not undertaking migratory movements. Red knots occupy all known wintering areas from December to February, but may be present in some wintering areas as early as September or as late as May. In the Southern Hemisphere, these months correspond to the austral summer (i.e., summer in the Southern Hemisphere), but for consistency in this document the terms ''winter'' and ''wintering area'' are used throughout the subspecies' range.

Wintering areas for the red knot include the Atlantic coasts of Argentina and Chile (particularly the island of Tierra del Fuego that spans both countries), the north coast of Brazil (particularly in the State of Maranhão), the Northwest Gulf of Mexico from the Mexican State of Tamaulipas through Texas (particularly at Laguna Madre) to Louisiana, and the Southeast United States from Florida (particularly the central Gulf coast) to North Carolina (Newstead *et al.* in press; L. Patrick pers. comm. August 31, 2012; Niles *et al.* 2008, p 17) (see supplemental

document—Rufa Red Knot Ecology and Abundance—figure 2). Smaller numbers of knots winter in the Caribbean, and along the central Gulf coast (Alabama, Mississippi), the mid-Atlantic, and the Northeast United States. *Calidris canutus* is also known to winter in Central America and northwest South America, but it is not yet clear if all these birds are the *rufa* subspecies. Little information exists on where juvenile red knots spend the winter months (USFWS and Conserve Wildlife Foundation 2012, p. 1), and there may be at least partial segregation of juvenile and adult red knots on the wintering grounds.

Migration

Each year red knots make one of the longest distance migrations known in the animal kingdom, traveling up to 19,000 miles (mi) (30,000 kilometers (km) annually. Red knots undertake long flights that may span thousands of miles without stopping. As *Calidris canutus* prepare to depart on long migratory flights, they undergo several physiological changes. Before takeoff, the birds accumulate and store large amounts of fat to fuel migration and undergo substantial changes in metabolic rates. In addition, leg muscles, gizzard (a muscular organ used for grinding food), stomach, intestines, and liver all decrease in size, while pectoral (chest) muscles and heart increase in size. Due to these physiological changes, *C. canutus* arriving from lengthy migrations are not able to feed maximally until their digestive systems regenerate, a process that may take several days. Because stopovers are time-constrained, *C. canutus* requires stopovers rich in easily digested food to achieve adequate weight gain (Niles *et al.* 2008, pp. 28–29; van Gils *et al.* 2005a, p. 2609; van Gils *et al.* 2005b, pp. 126–127; Piersma *et al.* 1999, pp. 405; 412) that fuels the next migratory flight and, upon arrival in the Arctic, fuels a body transformation to breeding condition (Morrison 2006, pp. 610–612). Red knots from different wintering areas appear to employ different migration strategies, including differences in timing, routes, and stopover areas. However, full segregation of migration strategies, routes, or stopover areas does not occur among red knots from different wintering areas.

Major spring stopover areas along the Atlantic coast include Río Gallegos, Península Valdés, and San Antonio Oeste (Patagonia, Argentina); Lagoa do Peixe (eastern Brazil, State of Rio Grande do Sul); Maranhão (northern Brazil); the Virginia barrier islands (United States); and Delaware Bay (Delaware and New Jersey, United States) (Cohen *et al.* 2009, p. 939; Niles *et al.* 2008, p. 19; González 2005, p. 14). Important fall stopover sites include southwest Hudson Bay (including the Nelson River delta), James Bay, the north shore of the St. Lawrence River, the Mingan Archipelago, and the Bay of Fundy in Canada; the coasts of Massachusetts and New Jersey and the mouth of the Altamaha River in Georgia, United States; the Caribbean (especially Puerto Rico and the Lesser Antilles); and the northern coast of South America from Brazil to Guyana (Newstead *et al.* in press; Niles 2012a; D. Mizrahi pers. comm. October 16, 2011; Niles *et al.* 2010a, pp. 125–136; Schneider and Winn 2010, p. 3; Niles *et al.* 2008, pp. 30, 75, 94; B. Harrington pers. comm. March 31, 2006; Antas and Nascimento 1996, pp. 66; Morrison and Harrington 1992, p. 74; Spaans 1978, p. 72). (See supplemental document—Rufa Red Knot Ecology and Abundance—figure 3.) However, large and small groups of red knots, sometimes numbering in the thousands, may occur in suitable habitats all along the Atlantic and Gulf coasts from Argentina to Canada during migration (Niles *et al.* 2008, p. 29).

Texas knots follow an inland flyway to and from the breeding grounds, using spring and fall stopovers along western Hudson Bay in Canada and in the northern Great Plains (Newstead *et al.* in press; Skagen *et al.* 1999). Stopover records from the Northern Plains are mainly in Canada, but small numbers of migrants have been sighted throughout the U.S. Great Plains States (eBird.org 2012). Some red knots wintering in the Southeastern United States and the Caribbean migrate north along the U.S. Atlantic coast before flying overland to central Canada from the mid-Atlantic, while others migrate overland directly to the Arctic from the Southeastern U.S. coast (Niles *et al.* in press). These eastern red knots typically make a short stop at James Bay in Canada, but may also stop briefly along the Great Lakes, perhaps in response to weather conditions (Niles et al. 2008, pp. 20, 24; Morrison and Harrington 1992, p. 79). Red knots are restricted to the ocean coasts during winter, and occur primarily along the coasts during migration. However, small numbers of rufa red knots are reported annually across the interior United States (i.e., greater than 25 miles from the Gulf or Atlantic Coasts) during spring and fall migration—these reported sightings are concentrated along the Great Lakes, but multiple reports have been made from nearly every interior State (eBird.org 2012).

Migration and Wintering Habitat

Long-distance migrant shorebirds are highly dependent on the continued existence of quality habitat at a few key staging areas. These areas serve as stepping stones between wintering and breeding areas. Conditions or factors influencing shorebird populations on staging areas control much of the remainder of the annual cycle and survival of the birds (Skagen 2006, p. 316; International Wader Study Group 2003, p. 10). At some stages of migration, very high proportions of entire populations may use a single migration staging site to prepare for long flights. Red knots show some fidelity to particular migration staging areas between years (Duerr *et al.* 2011, p. 16; Harrington 2001, pp. 8–9, 21).

Habitats used by red knots in migration and wintering areas are similar in character, generally coastal marine and estuarine (partially enclosed tidal area where fresh and salt water mixes) habitats with large areas of exposed intertidal sediments. In North America, red knots are commonly found along sandy, gravel, or cobble beaches, tidal mudflats, salt marshes, shallow coastal impoundments and lagoons, and peat banks (Cohen *et al.* 2010a, pp. 355, 358–359; Cohen *et al.* 2009, p. 940; Niles *et al.* 2008, pp. 30, 47; Harrington 2001, pp. 8–9; Truitt *et al.* 2001, p. 12). In many wintering and stopover areas, quality high-tide roosting habitat (i.e., close to feeding areas, protected from predators, with sufficient space during the highest tides, free from excessive human disturbance) is limited (K. Kalasz pers. comm. November 26, 2012; L. Niles pers. comm. November 19, 2012). The supra-tidal (above the high tide) sandy habitats of inlets provide important areas for roosting, especially at higher tides when intertidal habitats are inundated (Harrington 2008, pp. 2, 4–5).

Migration and Wintering Food

Across all subspecies, *Calidris canutus* is a specialized molluscivore, eating hard-shelled mollusks, sometimes supplemented with easily accessed softer invertebrate prey, such as shrimp- and crab-like organisms, marine worms, and horseshoe crab (*Limulus polyphemus*) eggs (Piersma and van Gils 2011, p. 9; Harrington 2001, pp. 9–11). Mollusk prey are swallowed whole and crushed in the gizzard (Piersma and van Gils 2011, pp. 9–11). From studies of other subspecies, Zwarts and Blomert (1992, p. 113) concluded that *C. canutus* cannot ingest

prey with a circumference greater than 1.2 in (30 millimeters (mm)). Foraging activity is largely dictated by tidal conditions, as *C. canutus* rarely wade in water more than 0.8 to 1.2 in (2 to 3 cm) deep (Harrington 2001, p. 10). Due to bill morphology, *C. canutus* is limited to foraging on only shallow-buried prey, within the top 0.8 to 1.2 in (2 to 3 cm) of sediment (Gerasimov 2009, p. 227; Zwarts and Blomert 1992, p. 113).

The primary prey of the rufa red knot in non-breeding habitats include blue mussel (*Mytilus edulis*) spat (juveniles); *Donax* and *Darina* clams; snails (*Littorina* spp.), and other mollusks, with polycheate worms, insect larvae, and crustaceans also eaten in some locations. A prominent departure from typical prey items occurs each spring when red knots feed on the eggs of horseshoe crabs, particularly during the key migration stopover within the Delaware Bay of New Jersey and Delaware. Delaware Bay serves as the principal spring migration staging area for the red knot because of the availability of horseshoe crab eggs (Clark *et al.* 2009, p. 85; Harrington 2001, pp. 2, 7; Harrington 1996, pp. 76–77; Morrison and Harrington 1992, pp. 76–77), which provide a superabundant source of easily digestible food.

Red knots and other shorebirds that are long-distance migrants must take advantage of seasonally abundant food resources at intermediate stopovers to build up fat reserves for the next non-stop, long-distance flight (Clark *et al.* 1993, p. 694). Although foraging red knots can be found widely distributed in small numbers within suitable habitats during the migration period, birds tend to concentrate in those areas where abundant food resources are consistently available from year to year.

Abundance

In the United States, red knot populations declined sharply in the late 1800s and early 1900s due to excessive sport and market hunting, followed by hunting restrictions and signs of population recovery by the mid-1900s (Urner and Storer 1949, pp. 178–183; Stone 1937, p. 465; Bent 1927, p. 132). However, it is unclear whether the red knot population fully recovered its historical numbers (Harrington 2001, p. 22) following the period of unregulated hunting.

More recently, long-term survey data from two key areas (Tierra del Fuego wintering area and Delaware Bay spring stopover site) both show a roughly 75 percent decline in red knot numbers since the 1980s (A. Dey pers. comm. October 12, 2012; G. Morrison pers. comm. August 31, 2012; Dey *et al.* 2011a, pp. 2–3; Clark *et al.* 2009, p. 88; Morrison *et al.* 2004, p. 65; Morrison and Ross 1989, Vol. 2, pp. 226, 252; Kochenberger 1983, p. 1; Dunne *et al.* 1982, p. 67; Wander and Dunne, 1982, p. 60). Survey data for the Virginia barrier islands spring stopover area show no trend since 1995 (B. Watts pers. comm. November 15, 2012). Survey data are also available for the Brazil, Northwest Gulf of Mexico, and Southeast-Caribbean wintering areas, but are insufficient to infer trends.

*Climate Change*

Comprehensive background information regarding climate change is available as a supplemental document (''Climate Change Background'') on the Internet at *http://www.regulations.gov* (Docket No. FWS–R5–ES–2013–0097; see **ADDRESSES** section for further access instructions). As explained in the supplemental document, the International Panel on Climate Change (IPCC) uses standardized terms to define levels of confidence (from ''very high'' to ''very low'') and likelihood (from ''virtually certain'' to ''exceptionally unlikely''). When used in this context, these terms are given in quotes in this document.

**Summary of Factors Affecting the Species**

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

*Overview of Threats Related to Climate Change*

We discuss the ongoing and projected effects of climate change, and the levels of certainty associated with these effects, in the appropriate sections of the five-factor analysis. For example, habitat loss from sea level rise is discussed under Factor A, and asynchronies (''mismatches'') in the timing of the annual cycle are discussed under Factor E. Here we present an overview of threats stemming from climate change, which are addressed in more detail in the sections that follow.

The natural history of Arctic-breeding shorebirds makes this group of species particularly vulnerable to global climate change (e.g., Meltofte *et al.* 2007, entire; Piersma and Lindström 2004, entire; Rehfisch and Crick 2003, entire; Piersma and Baker 2000, entire; Zöckler and Lysenko 2000, entire; Lindström and Agrell 1999, entire). Relatively low genetic diversity, which is thought to be a consequence of survival through past climate-driven population bottlenecks, may put shorebirds at more risk from human-induced climate variation than other avian taxa (Meltofte *et al.* 2007, p. 7); low genetic diversity may result in reduced adaptive capacity as well as increased risks when population sizes drop to low levels.

In the short term, red knots may benefit if warmer temperatures result in fewer years of delayed horseshoe crab spawning in Delaware Bay (Smith and Michaels 2006, pp. 487–488) or fewer occurrences of late snow melt in the breeding grounds (Meltofte *et al.* 2007, p. 7). However, there are indications that changes in the abundance and quality of red knot prey are already under way (Escudero *et al.* 2012, pp. 359–362; Jones *et al.* 2010, pp. 2255–2256), and prey species face ongoing climate-related threats from warmer temperatures (Jones *et al.* 2010, pp. 2255–2256; Philippart *et al.* 2003 p. 2171; Rehfisch and Crick 2003, p. 88), ocean acidification (National Research Council (NRC) 2010, p. 286; Fabry *et al.* 2008, p. 420), and possibly increased prevalence of disease and parasites (Ward and Lafferty 2004, p. 543). In addition, red knots face imminent threats from loss of habitat caused by sea level rise (NRC 2010, p. 44; Galbraith *et al.* 2002, pp. 177–178; Titus 1990, p. 66), and increasing asynchronies (''mismatches'') between the timing of their annual breeding, migration, and wintering cycles and the windows of peak food availability on which the birds depend (Smith *et al.* 2011a, pp. 575, 581; McGowan *et al.* 2011a, p. 2; Meltofte *et al.* 2007, p. 36; van Gils *et al.* 2005a, p. 2615; Baker *et al.* 2004, p. 878).

Several threats are related to the possibility of changing storm patterns. While variation in weather is a natural occurrence and is normally not considered a threat to the survival of a species, persistent changes in the frequency, intensity, or timing of storms at key locations where red knots congregate (e.g., key stopover areas) can pose a threat (see Factor E and the ''Coastal Storms and Extreme Weather''

section of the Climate Change Background supplemental document). Storms impact migratory shorebirds like the red knot both directly and indirectly. Direct impacts include energetic costs from a longer migration route as birds avoid storms, blowing birds off course, and outright mortality (Niles *et al.* 2010a, p. 129). Indirect impacts include changes to habitat suitability, storm-induced asynchronies between migration stopover periods and the times of peak prey availability, and possible prompting of birds to take refuge in areas where shorebird hunting is still practiced (Niles *et al.* 2012, p. 1; Dey *et al.* 2011b, pp. 1–2; Nebel 2011, p. 217).

With arctic warming, vegetation conditions in the red knot's breeding grounds are expected to change, causing the zone of nesting habitat to shift and perhaps contract, but this process may take decades to unfold (Feng *et al.* 2012, p. 1366; Meltofte *et al.* 2007, p. 36; Kaplan *et al.* 2003, p. 10). Ecological shifts in the Arctic may appear sooner. High uncertainty exists about when and how changing interactions among vegetation, predators, competitors, prey, parasites, and pathogens may affect the red knot, but the impacts are potentially profound (Fraser *et al.* 2013; entire; Schmidt *et al.* 2012, p. 4421; Meltofte *et al.* 2007, p. 35; Ims and Fuglei 2005, entire).

In summary, climate change is expected to affect red knot fitness and, therefore, survival through direct and indirect effects on breeding and nonbreeding habitat, food availability, and timing of the birds' annual cycle. Ecosystem changes in the arctic (e.g., changes in predation patterns and pressures) may also reduce reproductive output. Together, these anticipated changes will likely negatively influence the long-term survival of the rufa red knot.

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

In this section, we present and assess the best available scientific and commercial data regarding ongoing threats to the quantity and quality of red knot habitat. Within the nonbreeding portion of the range, red knot habitat is primarily threatened by the highly interrelated effects of sea level rise, shoreline stabilization, and coastal development. Lesser threats to nonbreeding habitat include agriculture and aquaculture, invasive vegetation, and beach maintenance activities. Within the breeding portion of the range, the primary threat to red knot habitat is from climate change. With arctic warming, vegetation conditions in the breeding grounds are expected to change, causing the zone of nesting habitat to shift and perhaps contract. Arctic freshwater systems—foraging areas for red knots during the nesting season—are particularly sensitive to climate change.

Factor A—Accelerating Sea Level Rise

For most of the year, red knots live in or immediately adjacent to intertidal areas. These habitats are naturally dynamic, as shorelines are continually reshaped by tides, currents, wind, and storms. Coastal habitats are susceptible to both abrupt (storm-related) and long-term (sea level rise) changes. Outside of the breeding grounds, red knots rely entirely on these coastal areas to fulfill their roosting and foraging needs, making the birds vulnerable to the effects of habitat loss from rising sea levels. Because conditions in coastal habitats are also critical for building up nutrient and energy stores for the long migration to the breeding grounds, sea level rise affecting conditions on staging areas also has the potential to impact the red knot's ability to breed successfully in the Arctic (Meltofte *et al.* 2007, p. 36).

According to the National Research Council (NRC) (2010, p. 43), the rate of global sea level rise has increased from about 0.02 in (0.6 mm) per year in the late 19th century to approximately 0.07 in (1.8 mm) per year in the last half of the 20th century. The rate of increase has accelerated, and over the past 15 years has been in excess of 0.12 in (3 mm) per year. In 2007, the IPCC estimated that sea level would ''likely'' rise by an additional 0.6 to 1.9 feet (ft) (0.18 to 0.59 meters (m)) by 2100 (NRC 2010, p. 44). This projection was based largely on the observed rates of change in ice sheets and projected future thermal expansion of the oceans but did not include the possibility of changes in ice sheet dynamics (e.g., rates and patterns of ice sheet growth versus loss). Scientists are working to improve how ice dynamics can be resolved in climate models. Recent research suggests that sea levels could potentially rise another 2.5 to 6.5 ft (0.8 to 2 m) by 2100, which is several times larger than the 2007 IPCC estimates (NRC 2010, p. 44; Pfeffer *et al.* 2008, p. 1340). However, projected rates of sea level rise estimates remain rather uncertain, due mainly to limits in scientific understanding of glacier and ice sheet dynamics (NRC 2010, p. 44; Pfeffer *et al.* 2008, p. 1342).

The amount of sea level change varies regionally because of different rates of settling (subsidence) or uplift of the land, and because of differences in ocean circulation (NRC 2010, p. 43). In the last century, for example, sea level rise along the U.S. mid-Atlantic and Gulf coasts exceeded the global average by 5 to 6 in (13 to 15 cm) because coastal lands in these areas are subsiding (U.S. Environmental Protection Agency (USEPA) 2013). Land subsidence also occurs in some areas of the Northeast, at current rates of 0.02 to 0.04 in (0.5 to 1 mm) per year across this region (Ashton *et al.* 2007, pp. 5–6), primarily the result of slow, natural geologic processes (National Oceanic and Atmospheric Administration (NOAA) 2013b, p. 28). Due to regional differences, a 2-ft (0.6-m) rise in global sea level by the end of this century would result in a relative sea level rise of 2.3 ft (0.7 m) at New York City, 2.9 ft (0.9 m) at Hampton Roads, Virginia, and 3.5 ft (1.1 m) at Galveston, Texas (U.S. Global Change Research Program (USGCRP) 2009, p. 37). Table 1 shows that local rates of sea level rise in the range of the red knot over the second half of the 20th century were generally higher than the global rate of 0.07 in (1.8 mm) per year.

TABLE 1—LOCAL SEA LEVEL TRENDS FROM WITHIN THE RANGE OF THE RED KNOT

[NOAA 2012a]

| Station | Mean local sea level trend (mm per year) | Data period |
|---|---|---|
| Pointe-Au-Père, Canada | −0.36 ± 0.40 | 1900–1983 |
| Woods Hole, Massachusetts | 2.61 ± 0.20 | 1932–2006 |
| Cape May, New Jersey | 4.06 ± 0.74 | 1965–2006 |
| Lewes, Delaware | 3.20 ± 0.28 | 1919–2006 |
| Chesapeake Bay Bridge Tunnel, Virginia | 6.05 ± 1.14 | 1975–2006 |

TABLE 1—LOCAL SEA LEVEL TRENDS FROM WITHIN THE RANGE OF THE RED KNOT—Continued

[NOAA 2012a]

| Station | Mean local sea level trend (mm per year) | Data period |
|---|---|---|
| Beaufort, North Carolina | 2.57 ± 0.44 | 1953–2006 |
| Clearwater Beach, Florida | 2.43 ± 0.80 | 1973–2006 |
| Padre Island, Texas | 3.48 ± 0.75 | 1958–2006 |
| Punto Deseado, Argentina | −0.06 ± 1.93 | 1970–2002 |

Data from along the U.S. Atlantic coast suggest a relationship between rates of sea level rise and long-term erosion rates; thus, long-term coastal erosion rates may increase as sea level rises (Florida Oceans and Coastal Council 2010, p. 6). However, even if such a correlation is borne out, predicting the effect of sea level rise on beaches is more complex. Even if wetland or upland coastal lands are lost, sandy or muddy intertidal habitats can often migrate or reform. However, forecasting how such changes may unfold is complex and uncertain. Potential effects of sea level rise on beaches vary regionally due to subsidence or uplift of the land, as well as the geological character of the coast and nearshore (U.S. Climate Change Science Program (CCSP) 2009b, p. XIV; Galbraith *et al.* 2002, p. 174). Precisely forecasting the effects of sea level rise on particular coastal habitats will require integration of diverse information on local rates of sea level rise, tidal ranges, subsurface and coastal topography, sediment accretion rates, coastal processes, and other factors that is beyond the capability of current models (CCSP 2009b, pp. 27–28; Frumhoff *et al.* 2007, p. 29; Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999). Furthermore, human manipulation of the coastal environment through beach nourishment, hard stabilization structures, and coastal development may negate forecasts based only on the physical sciences (Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999). Available information on the effects of sea level rise varies in specificity across the range of the red knot. At the international scale, only a relatively coarse assessment is possible. At the national scale, the U.S. Geological Survey's (USGS) Coastal Vulnerability Index (CVI) provides information at an intermediate level of resolution (Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999). Finally, more detailed regional, state, and local information is available for certain red knot wintering or stopover areas.

Sea Level Rise—International

International—Overview

We conducted an analysis to consider the possible effects of a 3.3-ft (1-m) increase in sea level in important nonbreeding habitats outside the United States, using global topographic mapping from the University of Arizona (Arizona Board of Regents, 2012; J. Weiss pers. comm. November 13, 2012; Weiss *et al.* 2011, p. 637). This visualization tool incorporates only current topography at a horizontal resolution of 0.6 mi (1 km) (Arizona Board of Regents, 2012). We did not evaluate Canadian breeding habitats for sea level rise because red knots nest inland above sea level (at elevations of up to 492 ft (150 m)) and, while in the Arctic, knots forage in freshwater wetlands and rarely contact salt water (Burger *et al.* 2012a, p. 26; Niles *et al.* 2008, pp. 27, 61).

We selected a 3.3-ft (1-m) sea level increase based on the availability of a global dataset, and because it falls within the current range of 2.6 to 6.6 ft (0.8 to 2 m) projected by 2100 (NRC 2010, p. 44). Along with topography (e.g., land elevation relative to sea level), the local tidal regime is an important factor in attempting to forecast the likely effects of sea level rise (Strauss *et al.* 2012, pp. 2, 6–8). Therefore, we also considered local tidal ranges (the vertical distance between the high tide and the succeeding low tide) and other factors that may influence the extent or effects of sea level rise when site-specific information was available and appropriate. In the 1990s, some studies (e.g., Gornitz *et al.* 1994, p. 330) classified coastlines with a large tidal range (''macrotidal'') (i.e., with a tidal range greater than 13 ft (4 m)) as more vulnerable to sea level rise because a large tidal range is associated with strong tidal currents that influence coastal behavior (Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999). More recently, however, the USGS inverted this ranking such that a macrotidal coastline is classified as low vulnerability. This change was based primarily on the potential influence of storms on coastal evolution, and the impact of storms relative to the tidal range. For example, on a tidal coastline, there is only a 50 percent chance of a storm occurring at high tide. Thus, for a region with a 13.1-ft (4-m) tidal range, a storm having a 9.8-ft (3-m) surge height is still up to 3.3 ft (1 m) below the elevation of high tide for half of the duration of each tidal cycle. A microtidal coastline (with a tidal range less than 6.6 ft (2 m)), on the other hand, is essentially always ''near'' high tide and, therefore, always at the greatest risk of significant storm impact (Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999).

Notwithstanding uncertainty about how tidal range will influence overall effects of sea level rise on coastal change, tidal range is also important due to the red knot's dependence on intertidal areas for foraging habitat. Along macrotidal coasts, large areas of intertidal habitat are exposed during low tide. In such areas, some intertidal habitat is likely to remain even with sea level rise, whereas a greater proportion of intertidal habitats may become permanently inundated in areas with smaller tidal ranges.

International—Analysis

Although no local modeling is available, large tidal ranges in the southernmost red knot wintering areas suggest extensive tidal flats will persist, although a projected 3.3-ft (1-m) rise in sea level will likely result in some habitat loss. Despite decreases in recent decades, Bahía Lomas in the Chile portion of Tierra del Fuego is still the largest single red knot wintering site. Extensive intertidal flats at Bahía Lomas are the result of daily tidal variation on the order of 20 to 30 ft (6 to 9 m), depending on the season. The Bahía Lomas flats extend for about 30 mi (50 km) along the coast, and during spring tides the intertidal distance reaches 4.3 mi (7 km) in places (Niles *et al.* 2008, p. 50). Some lands in the eastern portion of Bahía Lomas would potentially be impacted by a 3.3-ft (1-m) rise in sea level but not lands in the western portion. In the Argentina portion of

Tierra del Fuego, red knots winter chiefly in Bahía San Sebastián and Río Grande (Niles *et al.* 2008, p. 17). Tides in Bahía San Sebastián are up to 13 ft (4 m). Tides in Río Grande average 18 ft (5.5 m), with a maximum of 27.6 ft (8.4 m) (Escudero *et al.* 2012, p. 356). At high tides, some lands throughout Bahía San Sebastián and Río Grande would potentially be impacted by a 3.3-ft (1-m) rise in sea level; red knot habitat could be reduced at these sites.

On the Patagonian coast of Argentina, key red knot wintering and stopover areas include the Río Gallegos estuary and Bahía de San Antonio (San Antonio Oeste) (Niles *et al.* 2008, p. 19). Tides at Río Gallegos can rise 29 ft (8.8 m) (NOAA 2013c), and low tide exposes extensive intertidal silt-clay flats that in some places extend out for 0.9 mi (1.5 km) (Western Hemisphere Shorebird Reserve Network (WHSRN) 2012). With a 3.3-ft (1-m) sea level rise, extensive areas on the north side of the Río Gallegos estuary, west of the City of Río Gallegos, would potentially be impacted. At Bahía de San Antonio, the tidal range is 30.5 ft (9.3 m), and at low tide the water can withdraw as far as 4.3 mi (7 km) from the coastal dunes. Extensive tidal flats will persist at the lower tidal levels, even with a projected 3.3-ft (1-m) rise in sea level.

Despite decreases in recent decades, Lagoa do Peixe is a key spring stopover site for red knots on the east coast of Brazil. The lagoon is connected to the Atlantic Ocean through wind action and rain and sometimes through pumping or an artificial inlet (WHSRN 2012; Niles *et al.* 2008, p. 48). The shallow waters and mudflats that support foraging red knots are exposed irregularly by wind action and rain. The Atlantic coastline fronting Lagoa do Peixe would be impacted by a 3.3-ft (1-m) rise in sea level, which could potentially result in more extensive inundation of the lagoon through the inlet or via storm surges.

Coastal areas in North-Central Brazil in the State of Maranhão are used by migrating and wintering red knots, which forage on sandy beaches and mudflats and use extensive areas of mangroves (Niles *et al.* 2008, p. 48). In this region, local tidal ranges of up to 32.8 ft (10 m) are associated with strong tidal currents (Muehe 2010, p. 177). The largest concentrations of red knots have been recorded along the islands and complex coastline just east of Turiaçú Bay (Niles *et al.* 2008, pp. 71, 153), which has a tidal range of up to 26.2 ft (8 m) (Rebelo-Mochel and Ponzoni 2007, p. 684). Despite the large tidal ranges, topographic mapping suggests that nearly all the low-lying islands and coastline now used by red knots could become inundated by a 3.3-ft (1-m) sea level rise. As this region has low human population density (Rebelo-Mochel and Ponzoni 2007, p. 684), landward migration of suitable red knot habitats may be possible as sea levels rise. Muehe (2010, p. 177) suggested that the mangroves might be able to compensate for rising sea levels by migrating landward and laterally in some places, but movement could be frequently limited by the presence of cliffs along the open coasts and estuaries. Mangrove adaptation may not be sustained at rates of sea level rise higher than 0.3 in (7 mm) per year (Muehe 2010, p. 177), as would occur under the 3.3-ft (1-m) sea level rise scenario (CCSP 2009b, p. XV).

The IPCC (2007c, p. 58) evaluated the effects of a 1.6-ft (0.5-m) rise in sea level on small Caribbean islands, and found that up to 38 percent (±24 percent standard deviation) of the total current beach could be lost, with lower, narrower beaches being the most vulnerable. The IPCC did not relate this beach loss to shorebirds, but did find that sea turtle nesting habitat (the basic characteristics of which are similar to, and which often overlaps with, shorebird habitat) would be reduced by one-third under this 1.6-ft (0.5-m) scenario, which is now considered a low estimate of the sea level rise that is likely to occur by 2100 (NRC 2010, p. 44). In the Bahamas, ocean acidification (discussed further under Factor E, below) may exacerbate the effects of sea level rise by interfering with the biotic and chemical formation of carbonate-based sediments (Hallock 2005, pp. 25–27; Feely *et al.* 2004, pp. 365–366).

In Canada, the islands of the Mingan Archipelago could be inundated by a 3.3-ft (1-m) sea level rise. The topographic mapping shows some inundation of the adjacent mainland coastline (Mingan Archipelago National Park), as well as the Nelson River delta and the shores of James Bay, but, except where blocked by topography, red knot habitat in these areas may have more potential to migrate than on the islands. With a 3.3-ft (1-m) sea level rise, little intertidal area would be lost in the Bay of Fundy, which has the greatest tidal ranges in the world (up to 38.4 ft (11.7 m)) (NOAA 2013c), although some habitats around the mouths of rivers may become inundated. These areas are important stopover sites for red knots during migration (Newstead *et al.* in press; Niles *et al.* 2010a, pp. 125–136; Niles *et al.* 2008, p. 94).

International—Summary

Based on our analysis of topography, tidal range, and other factors, some habitat loss in Tierra del Fuego is expected with a 3.3-ft (1-m) rise in sea level, but considerable foraging habitat is likely to remain due to very large tidal ranges. Several key South American and Canadian stopover sites we examined are likely to be affected by sea level rise. In both Canada and South America, red knot coastal habitats are expected to migrate inland under a mid-range estimate (3.3-ft; 1-m) of sea level rise, except where constrained by topography, coastal development, or shoreline stabilization structures. The north coast of Brazil, low-lying Caribbean beaches, and Canada's Mingan Islands Archipelago may be exceptions and may experience more substantial red knot habitat loss even under moderate sea level rise. The upper range (6.6 ft; 2 m) of current predictions was not evaluated but would be expected to exceed the migration capacity of many more red knot habitats than the 3.3-ft (1-m) scenario. Thus, sea level rise is expected to result in localized habitat loss at several non-U.S. wintering and stopover areas. Cumulatively, these losses could affect the ability of red knots to complete their annual cycles that in turn may possibly affect fitness and survival.

Sea Level Rise—United States

United States—Mechanisms of Habitat Loss

Comparing topography to best available scenarios of sea level rise provides an estimate of the land area that may be vulnerable to the effects of sea level rise, but does not incorporate regional variation in tidal regimes (Strauss *et al.* 2012, p. 2), coastal processes (e.g., barrier island migration), or environmental changes that may occur as sea level rises (e.g., salt marsh deterioration) (CCSP 2009b, p. 44). Because the majority of the Atlantic and Gulf coasts consist of sandy shores, inundation alone is unlikely to reflect the potential consequences of sea level rise. Instead, long-term shoreline changes will involve contributions from both inundation and erosion, as well as changes to other coastal environments such as wetland losses. Most portions of the open coast of the United States will be subject to significant physical changes and erosion over the next century because the majority of coastlines consist of sandy beaches, which are highly mobile and in a state of continual change (CCSP 2009b, p. 44).

By altering coastal geomorphology, sea level rise will cause significant and often dramatic changes to coastal landforms including barrier islands,

beaches, and intertidal flats (CCSP 2009b, p. 13; Rehfisch and Crick 2003, p. 89), primary red knot habitats. Due to increasing sea levels, storm-surge-driven floods now qualifying as 100-year events are projected to occur as often as every 10 to 20 years along most of the U.S. Atlantic coast by 2050, with even higher frequencies of such large floods in certain localized areas (Tebaldi *et al.* 2012, pp. 7–8). Rising sea level not only increases the likelihood of coastal flooding, but also changes the template for waves and tides to sculpt the coast, which can lead to loss of land orders of magnitude greater than that from direct inundation alone (Ashton *et al.* 2007, p. 1). Although scientists agree that the predicted sea level rise will result in severe beach erosion and shoreline retreat through the next century, quantitative predictions of these changes are uncertain, hampered by limited understanding of coastal responses and the innate complexity of the coastal zone (Ashton *et al.* 2007, p. 9). Coastal responses to climate change will not likely be homogeneous along the coast, due to local differences in geology and other factors (Ashton *et al.* 2007, p. 9).

Beach losses accumulate over time, mostly during infrequent, high-energy events, both seasonal events and rare extreme storms (Ashton *et al.* 2009, p. 7). Even the long-term coastal response to sea level rise depends on the magnitudes and timing of stochastically unpredictable future storm events (Ashton *et al.* 2009, p. 9). Most erosion events on the Atlantic and Gulf coasts are the result of storms. With sea level rise, increased erosion is caused by longer storm surges and greater wave action from both tropical (especially on the southeast Atlantic and Gulf coasts) and extra-tropical storms (Higgins 2008, p. 49). The Atlantic and Gulf coast shorelines are especially vulnerable to long-term sea level rise, as well as any increase in the frequency of storm surges or hurricanes. The slope of these areas is so gentle that a small rise in sea level produces a large inland shift of the shoreline (Higgins 2008, p. 49). As discussed in the supplemental document Climate Change Background, increased magnitude and changing geographic distributions of coastal storms are predicted, but projections about changing storm patterns are associated with only ''low to medium confidence'' levels (IPCC 2012, p. 13).

In addition to the effects of storm surges, red knot habitats could also be affected by the increasing frequency and intensity of extreme precipitation events (see supplemental document—Climate Change Background). Since the ecological dynamics of sandy beaches can be linked to freshwater discharge from rivers, global changes in land-ocean coupling via freshwater outflows are predicted to affect the ecology of beaches (Schlacher *et al.* 2008a, p. 84). For example, persistent increases in freshwater discharges could cause localized habitat changes by allowing invasive or incompatible vegetation to become established, changing the seed distribution of native grasses, or altering salinity (F. Weaver pers. comm. April 17, 2013) (also see Factor E—Reduced Food Availability—Other Aspects of Climate Change).

Red knot migration and wintering habitats in the United States generally consist of sandy beaches that are dynamic and subject to seasonal erosion and accretion (the accumulation of sediment). Sea level rise and shoreline erosion have reduced availability of intertidal habitat used for red knot foraging, and in some areas, roosting sites have also been affected (Niles *et al.* 2008, p. 97). With moderately rising sea levels, red knot habitats in many portions of the United States would be expected to migrate or reform rather than be lost, except where they are constrained by coastal development or shoreline stabilization (Titus *et al.* 2009, p. 1) (discussed in subsequent sections). However, if the sea rises more rapidly than the rate with which a particular coastal system can keep pace, it could fundamentally change the state of the coast (CCSP 2009b, p. 2). The upper range (6.6 ft; 2 m) of current sea level rise predictions would be expected to exceed the migration capacity of many more red knot areas than the 3.3-ft (1-m) scenario.

Mechanisms—Estuarine Beaches

As sea level rises, the fate of estuarine beaches (e.g., along Delaware Bay) depends on their ability to migrate and the availability of sediment to replenish eroded sands. Estuarine beaches continually erode, but under natural conditions the landward and waterward boundaries usually retreat by about the same distance. Shoreline protection structures may prevent migration, effectively squeezing beaches between development and the water (CCSP 2009b, p. 81).

Mechanisms—Barrier Island Beaches

The barrier islands of the Atlantic and Gulf coasts have evolved in the context of modest and decelerating sea level rise over the past 5,000 years. If human activities do not interfere, these barrier systems can typically remain intact as they migrate landward, given sea level rise rates typical of those of the last few millennia (CCSP 2009b, p. 186; Ashton *et al.* 2007, p. 2). Without stabilization, many low-lying, undeveloped islands will migrate toward the mainland, pushed by the overwashing of sand eroding from the seaward side that gets re-deposited in the bay (Scavia *et al.* 2002, p. 152). However, even without human intervention, some barrier islands may respond to sea level rise by breaking up and drowning in place, rather than migrating (Titus 1990, p. 67). Coastal geologists are not yet able to forecast whether a particular island will migrate or break up, although island disintegration appears to be more frequent in areas with high rates of relative sea level rise (Titus 1990, p. 67); thus, disintegration may occur more often as rates of sea level rise accelerate.

Whether the barrier systems can continue to evolve with accelerated sea level rise is not clear, particularly as human intervention often does not permit the islands to continue to freely move landward (Ashton *et al.* 2007, p. 2). Sea level rise of 3.3 ft (1 m) may cause many narrow barrier islands to disintegrate (USEPA 2012). Because the coastal marshes behind many barrier islands become increasingly inundated, sufficiently high rates of sea level rise could result in threshold behaviors that produce wholesale reorganizations of entire barrier systems (CCSP 2009b, p. 2; Ashton *et al.* 2007, p. 10). Crossing threshold levels of interaction between coastal elevation, sea level, and storm-driven surges and waves can result in dramatic changes in coastal topography, including the loss of some low-lying islands (Florida Oceans and Coastal Council 2010, p. 7; CCSP 2009b, p. 50; Lavoie 2009, p. 37).

United States—Coastal Vulnerability Index

At the national scale, the USGS CVI combines the coastal system's susceptibility to change with its natural ability to adapt to changing environmental conditions. The output is a relative measure of the system's natural vulnerability to the effects of sea level rise. Classification of vulnerability (very high, high, moderate, or low) is based on variables such as coastal geomorphology, regional coastal slope, rate of sea level rise, wave and tide characteristics, and historical shoreline change rates. The combination of these variables and the association of these variables to each other furnishes a broad overview of regions where physical changes are likely to occur due to sea level rise (Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999).

We conducted a Geographic Information System (GIS) analysis to

overlay the CVI mapping with important red knot habitats, which were delineated using data from the International Shorebird Survey (eBird.org 2012) and other sources. By length, about half of the coastline within important red knot habitats is in the ''very high'' vulnerability category, and about two-thirds is either ''very high'' or ''high'' (table 2). Comparing these percentages to the Atlantic and Gulf coasts as a whole (less than one-third ''very high,'' only about half ''high'' or ''very high'') suggests that important red knot habitats tend to occur along higher-vulnerability portions of the shoreline. Red knot habitats along the Atlantic coast of New Jersey, Virginia, and the Carolinas and along the Gulf coast west of Florida are at particular risk from sea level rise. The GIS analysis does not reflect the potential for red knot habitats to migrate or reform (which is poorly known under high and accelerating rates of sea level rise) and did not consider human interference with coastal processes (which is discussed in subsequent sections).

TABLE 2—PERCENT OF COASTLINE (BY LENGTH) IN EACH COASTAL VULNERABILITY CATEGORY; IMPORTANT RED KNOT HABITATS VERSUS THE ENTIRE COAST

| | Very high | High | Moderate | Low |
|---|---|---|---|---|
| **Important Red Knot Habitats** | | | | |
| Massachusetts | 0 | 10 | 23 | 67 |
| New York | 0 | 7 | 50 | 43 |
| New Jersey—Atlantic | 69 | 10 | 22 | 0 |
| New Jersey—Delaware Bay | 0 | 77 | 14 | 9 |
| Delaware | 0 | 37 | 0 | 63 |
| Virginia | 99 | 1 | 0 | 0 |
| North Carolina | 59 | 15 | 25 | 1 |
| South Carolina | 59 | 23 | 18 | 0 |
| Georgia | 29 | 35 | 27 | 8 |
| Florida—Atlantic | 8 | 7 | 79 | 6 |
| Florida—Gulf | 2 | 41 | 53 | 3 |
| Mississippi | 100 | 0 | 0 | 0 |
| Louisiana | 100 | 0 | 0 | 0 |
| Texas | 63 | 20 | 17 | 0 |
| All States combined | 49 | 21 | 23 | 7 |
| **Entire Coast*** | | | | |
| Atlantic coast | 27 | 22 | 23 | 28 |
| Gulf coast | 42 | 13 | 37 | 8 |
| Atlantic and Gulf coasts combined | 31 | 19 | 26 | 23 |

* Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999.

United States—Northeast and Mid-Atlantic

In the Northeast (Maine to New Jersey), the areas most vulnerable to increasing shoreline erosion with sea level rise include portions of Cape Cod, Massachusetts; Long Island, New York; and most of coastal New Jersey (Cooper *et al.* 2008, p. 488; Frumhoff *et al.* 2007, p. 15). Because of the erosive impact of waves, especially storm waves, the extent of shoreline retreat and wetland loss in the Northeast is projected to be many times greater than the loss of land caused by the rise in sea level itself (Frumhoff *et al.* 2007, p. 15). Along the ocean shores of the mid-Atlantic (New York to North Carolina), which are composed of headlands, barrier islands, and spits, it is ''virtually certain'' that erosion will dominate changes in shoreline as a consequence of sea level rise and storms over the next century. It is ''very likely'' that coastal landforms will undergo large changes under regional sea level rise scenarios of 1.6 to 3.6 ft (0.5 to 1.1 m) (CCSP 2009b, pp. XV, 43). The response will vary locally and could be more variable than the changes observed over the last century. Under these scenarios, it is ''very likely'' that some barrier island coasts will cross a threshold and undergo significant changes. These changes include more rapid landward migration or segmentation of some barrier islands (CCSP 2009b, p. 43) that are likely to cause substantial changes to red knot habitats.

Mid-Atlantic—Delaware Bay Shorebird Habitat

The rate of sea level rise in the Delaware Bay over the past century was about 0.12 in (3 mm) per year (table 1; Kraft *et al.* 1992, p. 233; Phillips 1986a, p. 430), resulting in erosion of the bay's shorelines and a landward extension of the inland edge of the marshes. For the period 1940 to 1978, Phillips (1986a, pp. 428–429) documented a mean erosion rate of 10.5 ft (3.2 m) per year (standard deviation of 6 ft (1.85 m) per year) for a 32.3-mi (52-km) long section of the Delaware Bay shoreline in Cumberland County, New Jersey. This is a high rate of erosion compared to other estuaries and is affected by some very high local values (e.g., peninsular points, creek mouths) approaching 49 ft (15 m) per year (Phillips 1986a, pp. 429–430). The spatial pattern of the erosion was complex, with differential erosion resistance related to local differences in shoreline morphology (Phillips 1986b, pp. 57–58). Phillips's shoreline erosion studies (1986a, pp. 431–435; 1986b, pp. 56–60) suggested that bay-edge erosion was occurring more rapidly than the landward-upward extension of the coastal wetlands and that this pattern was likely to persist. Similar to the complex and heterogeneous pattern found by Phillips, Kraft *et al.* (1992, p. 233) found that some bayshore areas in Delaware were undergoing inundation while other areas were accreting faster than the local rate of sea level rise. Accompanying these sedimentary processes were coastal erosion rates up to 22.6 ft (6.9 m) per year along the Delaware portion of the bayshore (Kraft *et al.* 1992, p. 233). Erosion has led to loss of red knot roosting sites, which are already limited, especially around the

Mispillion Harbor portion of Delaware Bay (Niles *et al.* 2008, p. 97).

Glick *et al.* (2008, p. 31) found that existing marsh along Delaware Bay is predicted to be inundated with greater frequency as sea level rises. Under 2.3 and 3.3 ft (0.7 and 1 m) of sea level rise, 43 and 77 percent of marshes, respectively, are predicted to be lost. The area of estuarine beach is predicted to increase substantially, roughly doubling under all sea level rise scenarios. However, this finding assumes no additional shoreline armoring would take place. Further armoring may be likely, considering 6 to 8 percent of developed and undeveloped dry land is predicted to be lost under the various scenarios evaluated. At the high end (6.6-ft (2-m) sea level rise), 18 percent of developed land would be inundated without further armoring (Glick *et al.* 2008, p. 31).

Galbraith *et al.* (2002, pp. 177–178) examined several different scenarios of future sea level rise and projected major losses of intertidal habitat in Delaware Bay. Under a scenario of 1.1 ft (34 cm) global sea level rise, Delaware Bay was predicted to lose at least 20 percent of its intertidal shorebird feeding habitats by 2050, and at least 57 percent by 2100. Under a scenario of 2.5 ft (77 cm) global sea level rise, Delaware Bay would lose 43 percent of its tidal flats by 2050, but may actually see an increase of nearly 20 percent over baseline levels by 2100, as the coastline migrates farther inland and dry land is converted to intertidal (Galbraith *et al.* 2002, pp. 177–178). The net increase would be realized only after a long period (50 years) of severely reduced habitat availability, and assumes that landward migration would not be halted by development or armoring. Sea Level Affecting Marsh Modeling (SLAMM) of a 3.3-ft (1-m) sea level rise at Prime Hook (Delaware) and Cape May (New Jersey) National Wildlife Refuges, key Delaware Bay stopover areas, suggests that estuarine beaches would survive, but with increased vulnerability to storm surges as back marsh areas become inundated (Scarborough 2009, p. 61; Stern 2009; pp. 7–9).

Mid-Atlantic—Delaware Bay Horseshoe Crab Habitat

The narrow sandy beaches used by spawning horseshoe crabs in Delaware Bay are diminishing at sometimes rapid rates due to beach erosion as a product of land subsidence and sea level rise (CCSP 2009b, p. 207). At Maurice Cove, New Jersey, for example, portions of the shoreline eroded at a rate of 14.1 ft (4.3 m) per year from 1842 to 1992. Another estimate for this area suggests the shoreline retreated about 500 ft (150 m) landward in a 32-year period, exposing ancient peat deposits that are considered suboptimal spawning habitat for the horseshoe crab. Particularly if human infrastructure along the coast leaves estuarine beaches little room to migrate inland as sea level rises, further loss of spawning habitat is likely (CCSP 2009b, p. 207).

At present, the degree to which horseshoe crab populations will decline as beaches are lost remains unclear. Botton *et al.* (1988, p. 331) found that even subtle alteration of the sediment, such as through erosion, may affect the suitability of habitat for horseshoe crab reproduction, and that horseshoe crab spawning activity is lower in areas where erosion has exposed underlying peat (Botton *et al.* 1988, p. 325). Through habitat modeling, Czaja (2009, p. 9) found overall horseshoe crab habitat suitability in Delaware Bay was lower with a 3.9-ft (1.2-m) sea level rise than a 2-ft (0.6-m) rise, although this study did not attempt to account for landward migration. Research suggests that horseshoe crabs can successfully reproduce in alternate habitats (other than estuarine beaches), such as sandbars and the sandy banks of tidal creeks (CCSP 2009b, p. 82). However, these habitats may provide only a temporary refuge for horseshoe crabs if the alternate habitats eventually become inundated as well (CCSP 2009b, p. 82). In addition, these alternate spawning habitats may not be conducive to foraging red knots, or may not be available in sufficient amounts to support red knot and other shorebird populations during spring migration.

In 2012, Delaware Bay lost considerable horseshoe crab spawning habitat during Hurricane Sandy. A team of biologists found a 70 percent decrease in optimal horseshoe crab spawning habitat (Niles *et al.* 2012, p. 1). Several areas were eroded to exposed sod bank or rubble (used in shoreline stabilization), which do not provide suitable spawning habitat. Creek mouths may now constitute the bulk of the remaining intact spawning areas (Dey pers. comm., December 3, 2012). However, any conclusions about the long-term effects of this storm are premature due to the highly dynamic nature of the shoreline.

United States—Southeast and the Gulf Coast

Rates of erosion for the Southeast Atlantic region are generally highest in South Carolina along barrier islands and headland shores associated with the Santee delta. Erosion is also rapid along some barrier islands in North Carolina. The highest rates of erosion in Florida are generally localized around tidal inlets (Morton and Miller 2005, p. 1). Looking at 17 recreational beaches in North Carolina and 3 local sea level rise scenarios, Bin (*et al.* 2007, p. 9) projected 10 to 30 percent increases in beach erosion by 2030, and 20 to 60 percent increases by 2080. These authors assumed a constant coastwide rate of erosion, no barrier island migration, and no beach nourishment or hardening (Bin *et al.* 2007, p. 8).

The barrier islands in the Georgia Bight (southern South Carolina to northern Florida) are generally higher in elevation, wider, and more geologically stable than the microtidal barriers found elsewhere along the Atlantic coast (Leatherman, 1989, p. 2–15). This lower vulnerability to sea level rise is generally reflected in the CVI (table 2). The most stable Southeast Atlantic beaches are along the east coast of Florida due to low wave energy, but also due to frequent beach nourishment (Morton and Miller 2005, p. 1), which can have both beneficial and adverse effects on red knot habitat as discussed in the section that follows. Although Florida's Atlantic coast in general is more stable than other portions of the red knot's U.S. range, localized changes from sea level rise can be significant. Modeling (SLAMM 6) of a 3.3-ft (1-m) sea level rise by 2011 at Merritt Island National Wildlife Refuge (which supports red knots) projects a 47 percent loss of estuarine beach habitats (USFWS 2011d, p. 13).

In contrast to the more stable southern Atlantic shores of Georgia and Florida, the Gulf coast is the lowest-lying area in the United States and consequently the most sensitive to small changes in sea level (Leatherman 1989, p. 2–15). Sediment compaction and oil and gas extraction in the Gulf have compounded tectonic subsidence, leading to greater rates of relative sea level rise (Hopkinson *et al.* 2008, p. 255; Morton 2003, pp. 21–22; Morton *et al.* 2003, p. 77; Penland and Ramsey 1990, p. 323). In addition, areas with small tidal ranges are the most vulnerable to loss of intertidal wetlands and flats induced by sea level rise (USEPA 2013; Thieler and Hammar-Klose 2000; Thieler and Hammar-Klose 1999). Tidal range along the Gulf coast is very low, less than 3.3 ft (1 m) in some areas.

In Alabama, coastal land loss is caused primarily by beach and bluff erosion, but other mechanisms for loss, such as submergence, appear to be minor. Barrier islands in Mississippi are migrating laterally and erosion rates are accelerating; island areas have been

reduced by about one-third since the 1850s (Morton *et al.* 2004, p. 29).

Erosion is rapid along some barrier islands and headlands in Texas (Morton *et al.* 2004, p. 4). Texas loses approximately 5 to 10 ft (1.5 to 3 m) of beach per year, as the high water line shifts landward (Higgins 2008, p. 49). Sea level rise was cited as a contributing factor in a 68 percent decline in tidal flats and algal mats in the Corpus Christi area (i.e., Lamar Peninsula to Encinal Peninsula) in Texas from the 1950s to 2004 (Tremblay *et al.* 2008, p. 59). Long-term erosion at an average rate of $-5.9 \pm 4.3$ ft ($1.8 \pm 1.3$ m) per year characterizes 64 percent of the Texas Gulf shoreline. Although only 48 percent of the shoreline experienced short-term erosion, the average short-term erosion rate of $-8.5$ ft ($-2.6$ m) per year is higher than the long-term rate, indicating accelerated erosion in some areas. Erosion of Gulf beaches in Texas is concentrated between Sabine Pass and High Island, downdrift (southwest) of the Galveston Island seawall, near Sargent Beach and Matagorda Peninsula, and along South Padre Island. The most stable or accreting beaches in Texas are on southwestern Bolivar Peninsula, Matagorda Island, San Jose Island, and central Padre Island (Morton *et al.* 2004, p. 32).

Rates of erosion for the U.S. Gulf coast are generally highest in Louisiana along barrier island and headland shores associated with the Mississippi delta (Morton *et al.* 2004, p. 4). Louisiana has the most rapid rate of beach erosion in the country (Leatherman 1989, p. 2–15). Subsidence and coastal erosion are functions of both natural and human-induced processes. About 90 percent of the Louisiana Gulf shoreline is experiencing erosion, which increased from an average of $-26.9 \pm 14.4$ ft ($-8.2 \pm 4.4$ m) per year in the long term to an average of $-39.4$ ft ($-12.0$ m) per year in the short term. Short sections of the shoreline are accreting as a result of lateral island migration, while the highest rates of erosion in Louisiana coincide with subsiding marshes and migrating barrier islands such as the Chandeleur Islands, Caminada-Moreau headland, and the Isles Dernieres (Morton *et al.* 2004, p. 31).

Compared to shoreline erosion in some other Gulf coast states, the average long-term erosion rate of $-2.5 \pm 3.0$ ft ($-0.8 \pm 0.9$ m) per year for west Florida is low, primarily because wave energy is low. Although erosion rates are generally low, more than 50 percent of the shoreline is experiencing both long-term and short-term erosion. The highest erosion rates on Florida's Gulf coast are typically localized near tidal inlets, a preferred red knot habitat (see the ''Migration and Wintering Habitat'' section of the Rufa Red Knot Ecology and Abundance supplemental document). Long-term and short-term trends and rates of shoreline change are similar where there has been little or no alteration of the sediment supply or littoral system (e.g., Dog Island, St. George Island, and St. Joseph Peninsula). Conversely, trends and rates of change have shifted from long-term erosion to short-term stability or accretion where beach nourishment is common (e.g., Longboat Key, Anna Maria Island, Sand Key, and Clearwater, Panama City Beach, and Perdido Key). Slow but chronic erosion along the west coast of Florida eventually results in narrowing of the beaches (Morton *et al.* 2004, pp. 27, 29).

Strauss *et al.* (2012, p. 4) found more than 78 percent of the coastal dry land and freshwater wetlands on land less than 3.3 ft (1 m) above local Mean High Water in the continental United States is located in Louisiana, Florida, North Carolina, and South Carolina.

United States—Summary

Important red knot habitats tend to occur along higher-vulnerability portions of the U.S. shoreline. Red knot habitats along the Atlantic coast of New Jersey, Virginia, and the Carolinas and along the Gulf coast west of Florida are at particular risk from sea level rise. Delaware Bay is projected to lose substantial shorebird habitat by mid-century, even under moderate scenarios of sea level rise. In many areas, red knot coastal habitats are expected to migrate inland under a mid-range estimate (3.3-ft; 1-m) of sea level rise, except where constrained by topography, coastal development, or shoreline stabilization structures. Some areas may see short- or long-term net increases in red knot habitat, but low-lying and narrow islands become more prone to disintegration as sea level rise accelerates, which may produce local or regional net losses of habitat. The upper range (6.6 ft; 2 m) of current predictions was not evaluated, but would be expected to exceed the migration capacity of many more red knot habitats than the 3.3-ft (1-m) scenario.

Sea Level Rise—Summary

Due to background rates of sea level rise and the naturally dynamic nature of coastal habitats, we conclude that red knots are adapted to moderate (although sometimes abrupt) rates of habitat change in their wintering and migration areas. However, rates of sea level rise are accelerating beyond those that have occurred over recent millennia. In most of the red knot's nonbreeding range, shorelines are expected to undergo dramatic reconfigurations over the next century as a result of accelerating sea level rise. Extensive areas of marsh are likely to become inundated, which may reduce foraging and roosting habitats. Marshes may be able to establish farther inland, but the rate of new marsh formation (e.g., intertidal sediment accumulation, development of hydric soils, colonization of marsh vegetation) may be slower than the rate of deterioration of existing marsh, particularly under the higher sea level rise scenarios. The primary red knot foraging habitats, intertidal flats and sandy beaches, will likely be locally or regionally inundated, but replacement habitats are likely to reform along the shoreline in its new position. However, if shorelines experience a decades-long period of high instability and landward migration, the formation rate of new beach habitats may be slower than the inundation rate of existing habitats. In addition, low-lying and narrow islands (e.g., in the Caribbean and along the Gulf and Atlantic coasts) may disintegrate rather than migrate, representing a net loss of red knot habitat. Superimposed on these changes are widespread human attempts to stabilize the shoreline, which are known to exacerbate losses of intertidal habitats by blocking their landward migration. The cumulative loss of habitat across the nonbreeding range could affect the ability of red knots to complete their annual cycles, possibly affecting fitness and survival, and is thereby likely to negatively influence the long-term survival of the rufa red knot.

Factor A—U.S. Shoreline Stabilization and Coastal Development

Much of the U.S. coast within the range of the red knot is already extensively developed. Direct loss of shorebird habitats occurred over the past century as substantial commercial and residential developments were constructed in and adjacent to ocean and estuarine beaches along the Atlantic and Gulf coasts. In addition, red knot habitat was also lost indirectly, as sediment supplies were reduced and stabilization structures were constructed to protect developed areas.

Sea level rise and human activities within coastal watersheds can lead to long-term reductions in sediment supply to the coast. The damming of rivers, bulk-heading of highlands, and armoring of coastal bluffs have reduced erosion in natural source areas and consequently the sediment loads reaching coastal areas. Although it is

difficult to quantify, the cumulative reduction in sediment supply from human activities may contribute substantially to the long-term shoreline erosion rate. Along coastlines subject to sediment deficits, the amount of sediment supplied to the coast is less than that lost to storms and coastal sinks (inlet channels, bays, and upland deposits), leading to long-term shoreline recession (Coastal Protection and Restoration Authority of Louisiana 2012, p. 18; Florida Oceans and Coastal Council 2010, p. 7; CCSP 2009b, pp. 48–49, 52–53; Defeo *et al.* 2009, p. 6; Morton *et al.* 2004, pp. 24–25; Morton 2003, pp. 11–14; Herrington 2003, p. 38; Greene 2002, p. 3).

In addition to reduced sediment supplies, other factors such as stabilized inlets, shoreline stabilization structures, and coastal development can exacerbate long-term erosion (Herrington 2003, p. 38). Coastal development and shoreline stabilization can be mutually reinforcing. Coastal development often encourages shoreline stabilization because stabilization projects cost less than the value of the buildings and infrastructure. Conversely, shoreline stabilization sometimes encourages coastal development by making a previously high-risk area seem safer for development (CCSP 2009b, p. 87). Protection of developed areas is the driving force behind ongoing shoreline stabilization efforts. Large-scale shoreline stabilization projects became common in the past 100 years with the increasing availability of heavy machinery. Shoreline stabilization methods change in response to changing new technologies, coastal conditions, and preferences of residents, planners, and engineers. Along the Atlantic and Gulf coasts, an early preference for shore-perpendicular structures (e.g., groins) was followed by a period of construction of shore-parallel structures (e.g., seawalls), and then a period of beach nourishment, which is now favored (Morton *et al.* 2004, p. 4; Nordstrom 2000, pp. 13–14).

Past and ongoing stabilization projects fundamentally alter the naturally dynamic coastal processes that create and maintain beach strand and bayside habitats, including those habitat components that red knots rely upon. Past loss of stopover and wintering habitat likely reduce the resilience of the red knot by making it more dependent on those habitats that remain, and more vulnerable to threats (e.g., disturbance, predation, reduced quality or abundance of prey, increased intraspecific and interspecific competition) within those restricted habitats. (See Factors C and E, below, for discussions of these threats, many of which are intensified in and near developed areas.)

Shoreline Stabilization—Hard Structures

Hard structures constructed of stone, concrete, wood, steel, or geotextiles have been used for centuries as a coastal defense strategy (Defeo *et al.* 2009, p. 6). The most common hard stabilization structures fall into two groups: structures that run parallel to the shoreline (e.g., seawalls, revetments, bulkheads) and structures that run perpendicular to the shoreline (e.g., groins, jetties). Groins are often clustered in groin fields, and are intended to protect a finite section of beach, while jetties are normally constructed at inlets to keep sand out of navigation channels and provide calm-water access to harbor facilities (U.S. Army Corps of Engineers (USACE) 2002, pp. I–3–13, 21). Descriptions of the different types of stabilization structures can be found in Rice (2009, pp. 10–13), Herrington (2003, pp. 66–89), and USACE (2002, Parts V and VI).

Prior to the 1950s, the general practice in the United States was to use hard structures to protect developments from beach erosion or storm damages (USACE 2002, p. I–3–21). The pace of constructing new hard stabilization structures has since slowed considerably (USACE 2002, p. V–3–9). Many states within the range of the red knot now discourage or restrict the construction of new, hard oceanfront protection structures, although the hardening of bayside shorelines is generally still allowed (Kana 2011, p. 31; Greene 2002, p. 4; Titus 2000, pp. 742–743). Most existing hard oceanfront structures continue to be maintained, and some new structures continue to be built. Eleven new groin projects were approved in Florida from 2000 to 2009 (USFWS 2009, p. 36). Since 2006 a new terminal groin has been constructed at one South Carolina site, three groins have been approved but not yet constructed in conjunction with a beach nourishment project, and a proposed new terminal groin is under review (M. Bimbi pers. comm. January 31, 2013). The State of North Carolina prohibited the use of hard erosion control structures in 1985, but 2011 legislation authorized an exception for construction of up to four new terminal groins (Rice 2012a, p. 7). While some states have restricted new construction, hard structures are still among the alternatives in the Federal shore protection program (USACE 2002, pp. V–3–3, 7).

Hard shoreline stabilization projects are typically designed to protect property (and its human inhabitants), not beaches (Kana 2011, p. 31; Pilkey and Howard 1981, p. 2). Hard structures affect beaches in several ways. For example, when a hard structure is put in place, erosion of the oceanfront sand continues, but the fixed back-beach line remains, resulting in a loss of beach area (USACE 2002, p. I–3–21). In addition, hard structures reduce the regional supply of beach sediment by restricting natural sand movement, further increasing erosion problems (Morton *et al.* 2004, p. 25; Morton 2003, pp. 19–20; Greene 2002, p. 3). Through effects on waves and currents, sediment transport rates, Aeolian (wind) processes, and sand exchanges with dunes and offshore bars, hard structures change the erosion-accretion dynamics of beaches and constrain the natural migration of shorelines (CCSP 2009b, pp. 73, 81–82; 99–100; Defeo *et al.* 2009, p. 6; Morton 2003, pp. 19–20; Scavia *et al.* 2002, p. 152; Nordstrom 2000, pp. 98–107, 115–118). There is ample evidence of accelerated erosion rates, pronounced breaks in shoreline orientation, and truncation of the beach profile downdrift of perpendicular structures—and of reduced beach widths (relative to unprotected segments) where parallel structures have been in place over long periods of time (Hafner 2012, pp. 11–14; CCSP 2009b, pp. 99–100; Morton 2003, pp. 20–21; Scavia *et al.* 2002, p. 159; USACE 2002, pp. V–3–3, 7; Nordstrom 2000, pp. 98–107; Pilkey and Wright 1988, pp. 41, 57–59). In addition, marinas and port facilities built out from the shore can have effects similar to hard stabilization structures (Nordstrom 2000, pp. 118–119).

Structural development along the shoreline and manipulation of natural inlets upset the naturally dynamic coastal processes and result in loss or degradation of beach habitat (Melvin *et al.* 1991, pp. 24–25). As beaches narrow, the reduced habitat can directly lower the diversity and abundance of biota (life forms), especially in the upper intertidal zone. Shorebirds may be impacted both by reduced habitat area for roosting and foraging, and by declining intertidal prey resources, as has been documented in California (Defeo *et al.* 2009, p. 6; Dugan and Hubbard 2006, p. 10). In an estuary in England, Stillman *et al.* (2005, pp. 203–204) found that a two to eight percent reduction in intertidal area (the magnitude expected through sea level rise and industrial developments including extensive stabilization structures) decreased the predicted

survival rates of five out of nine shorebird species evaluated (although not of *Calidris canutus*).

In Delaware Bay, hard structures also cause or accelerate loss of horseshoe crab spawning habitat (CCSP 2009b, p. 82; Botton *et al. in* Shuster *et al.* 2003, p. 16; Botton *et al.* 1988, entire), and shorebird habitat has been, and may continue to be, lost where bulkheads have been built (Clark *in* Farrell and Martin 1997, p. 24). In addition to directly eliminating red knot habitat, hard structures interfere with the creation of new shorebird habitats by interrupting the natural processes of overwash and inlet formation. Where hard stabilization is installed, the eventual loss of the beach and its associated habitats is virtually assured (Rice 2009, p. 3), absent beach nourishment, which may also impact red knots as discussed below. Where they are maintained, hard structures are likely to significantly increase the amount of red knot habitat lost as sea levels continue to rise.

In a few isolated locations, however, hard structures may enhance red knot habitat, or may provide artificial habitat. In Delaware Bay, for example, Botton *et al.* (1994, p. 614) found that, in the same manner as natural shoreline discontinuities like creek mouths, jetties and other artificial obstructions can act to concentrate drifting horseshoe crab eggs and thereby attract shorebirds. Another example comes from the Delaware side of the bay, where a seawall and jetty at Mispillion Harbor protect the confluence of the Mispillion River and Cedar Creek. These structures create a low energy environment in the harbor, which seems to provide highly suitable conditions for horseshoe crab spawning over a wider variation of weather and sea conditions than anywhere else in the bay (G. Breese pers. comm. March 25, 2013). Horseshoe crab egg densities at Mispillion Harbor are consistently an order of magnitude higher than at other bay beaches (Dey *et al.* 2011a, p. 8), and this site consistently supports upwards of 15 to 20 percent of all the knots recorded in Delaware Bay (Lathrop 2005, p. 4). In Florida, A. Schwarzer (pers. comm. March 25, 2013) has observed multiple instances of red knots using artificial structures such as docks, piers, jetties, causeways, and construction barriers; we have no information regarding the frequency, regularity, timing, or significance of this use of artificial habitats. Notwithstanding localized red knot use of artificial structures, and the isolated case of hard structures improving foraging habitat at Mispillion Harbor, the nearly universal effect of such structures is the degradation or loss of red knot habitat.

Shoreline Stabilization—Mechanical Sediment Transport

Several types of sediment transport are employed to stabilize shorelines, protect development, maintain navigation channels, and provide for recreation (Gebert 2012, pp. 14, 16; Kana 2011, pp. 31–33; USACE 2002, p. I–3–7). The effects of these projects are typically expected to be relatively short in duration, usually less than 10 years, but often these actions are carried out every few years in the same area, resulting in a more lasting impact on habitat suitability for shorebirds. Mechanical sediment transport practices include beach nourishment, sediment backpassing, sand scraping, and dredging, and each practice is discussed below.

Sediment Transport—Beach Nourishment

Beach nourishment is an engineering practice of deliberately adding sand (or gravel or cobbles) to an eroding beach, or the construction of a beach where only a small beach, or no beach, previously existed (NRC 1995, pp. 23–24). Since the 1970s, 90 percent of the Federal appropriation for shore protection has been for beach nourishment (USACE 2002, p. I–3–21), which has become the preferred course of action to address shoreline erosion in the United States (Kana 2011, p. 33; Morton and Miller 2005, p. 1; Greene 2002, p. 5). Beach nourishment requires an abundant source of sand that is compatible with the native beach material. The sand is trucked to the target beach, or hydraulically pumped using dredges (Hafner 2012, p. 21). Sand for beach nourishment operations can be obtained from dry land-based sources; estuaries, lagoons, or inlets on the backside of the beach; sandy shoals in inlets and navigation channels; nearshore ocean waters; or offshore ocean waters; with the last two being the most common sources (Greene 2002, p. 6).

Where shorebird habitat has been severely reduced or eliminated by hard stabilization structures, beach nourishment may be the only means available to replace any habitat for as long as the hard structures are maintained (Nordstrom and Mauriello 2001, entire), although such habitat will persist only with regular nourishment episodes (typically on the order of every 2 to 6 years). In Delaware Bay, beach nourishment has been recommended to prevent loss of spawning habitat for horseshoe crabs (Kalasz 2008, p. 34; Carter *et al. in* Guilfoyle *et al.* 2007, p. 71; Atlantic States Marine Fisheries Commission (ASMFC) 1998, p. 28), and is being pursued as a means of restoring shorebird habitat in Delaware Bay following Hurricane Sandy (Niles *et al.* 2013, entire; USACE 2012, entire). Beach nourishment was part of a 2009 project to maintain important shorebird foraging habitat at Mispillion Harbor, Delaware (Kalasz pers. comm. March 29, 2013; Siok and Wilson 2011, entire). However, red knots may be directly disturbed if beach nourishment takes place while the birds are present. On New Jersey's Atlantic coast, beach nourishment has typically been scheduled for the fall, when red knots are present, because of various constraints at other times of year. In addition to causing disturbance during construction, beach nourishment often increases recreational use of the widened beaches that, without careful management, can increase disturbance of red knots. Beach nourishment can also temporarily depress, and sometimes permanently alter, the invertebrate prey base on which shorebirds depend. These effects (disturbance, reduced food resources) are discussed further under Factor E, below.

In addition to disturbing the birds and impacting the prey base, beach nourishment can affect the quality and quantity of red knot habitat (M. Bimbi pers. comm. November 1, 2012; Greene 2002, p. 5). The artificial beach created by nourishment may provide only suboptimal habitat for red knots, as a steeper beach profile is created when sand is stacked on the beach during the nourishment process. In some cases, nourishment is accompanied by the planting of dense beach grasses, which can directly degrade habitat, as red knots require sparse vegetation to avoid predation. By precluding overwash and Aeolian transport, especially where large artificial dunes are constructed, beach nourishment can also lead to further erosion on the bayside and promote bayside vegetation growth, both of which can degrade the red knot's preferred foraging and roosting habitats (sparsely vegetated flats in or adjacent to intertidal areas). Preclusion of overwash also impedes the formation of new red knot habitats. Beach nourishment can also encourage further development, bringing further habitat impacts, reducing future alternative management options such as a retreat from the coast, and perpetuating the developed and stabilized conditions that may ultimately lead to inundation where beaches are prevented from

migrating (M. Bimbi pers. comm. November 1, 2012; Greene 2002, p. 5).

Following placement of sediments much coarser than those native to the beach, Peterson *et al.* (2006, p. 219) found that the area of intertidal-shallow subtidal shorebird foraging habitat was reduced by 14 to 29 percent at a site in North Carolina. Presence of coarse shell material armored the substrate surface against shorebird probing, further reducing foraging habitat by 33 percent, and probably also inhibiting manipulation of prey when encountered by a bird's bill (Peterson *et al.* 2006, p. 219). (In addition to this physical change from adding coarse sediment, nourishment that places sediment dissimilar to the native beach also substantially increases impacts to the red knot's invertebrate prey base; see Factor E—Reduced Food Availability—Sediment Placement.) Lott (2009, p. viii) found a strong negative correlation between sand placement projects and the presence of piping plovers (*Charadrius melodus*) (nonbreeding) and snowy plovers (*Charadrius alexandrinus*) (breeding and nonbreeding) in Florida.

Sediment Transport—Backpassing and Scraping

Sediment backpassing is a technique that reverses the natural migration of sediment by mechanically (via trucks) or hydraulically (via pipes) transporting sand from accreting, downdrift areas of the beach to eroding, updrift areas of the beach (Kana 2011, p. 31; Chasten and Rosati 2010, p. 5). Currently less prevalent than beach nourishment, sediment backpassing is an emerging practice because traditional nourishment methods are beginning to face constraints on budgets and sediment availability (Hafner 2012, pp. 31, 35; Chase 2006, p. 19). Beach bulldozing or scraping is the process of mechanically redistributing beach sand from the littoral zone (along the edge of the sea) to the upper beach to increase the size of the primary dune or to provide a source of sediment for beaches that have no existing dune; no new sediment is added to the system (Kana 2011, p. 30; Greene 2002, p. 5; Lindquist and Manning 2001, p. 4). Beach scraping tends to be a localized practice. In Florida beach scraping is usually used only in emergencies such as after hurricanes and other storms, but in New Jersey this practice is more routine in some areas.

Many of the effects of sediment backpassing and beach scraping are similar to those for beach nourishment (USFWS 2011c, pp. 11–24; Lindquist and Manning 2001, p. 1), including disturbance during and after construction, alteration of prey resources, reduced habitat area and quality, and precluded formation of new habitats. Relative to beach nourishment, sediment backpassing and beach scraping can involve considerably more driving of heavy trucks and other equipment on the beach including areas outside the sand placement footprint, potentially impacting shorebird prey resources over a larger area (see Factor E, below, for discussion of vehicle impacts on prey resources) (USFWS 2011c, pp. 11–24). In addition, these practices can directly remove sand from red knot habitats, as is the case in one red knot concentration area in New Jersey (USFWS 2011c, p. 27). Backpassing and sand scraping can involve routine episodes of sand removal or transport that maintain the beach in a narrower condition, indefinitely reducing the quantity of back-beach roosting habitat.

Sediment Transport—Dredging

Sediments are also manipulated to maintain navigation channels. Many inlets in the U.S. range of the red knot are routinely dredged and sometimes relocated. In addition, nearshore areas are routinely dredged (''mined'') to obtain sand for beach nourishment. Regardless of the purpose, inlet and nearshore dredging can affect red knot habitats. Dredging often involves removal of sediment from sand bars, shoals, and inlets in the nearshore zone, directly impacting optimal red knot roosting and foraging habitats (Harrington 2008, p. 2; Harrington *in* Guilfoyle *et al.* 2007, pp. 18–19; Winn and Harrington *in* Guilfoyle *et al.* 2006, pp. 8–11). These ephemeral habitats are even more valuable to red knots because they tend to receive less recreational use than the main beach strand (see Factor E—Human Disturbance, below).

In addition to causing this direct habitat loss, the dredging of sand bars and shoals can preclude the creation and maintenance of red knot habitats by removing sand sources that would otherwise act as natural breakwaters and weld onto the shore over time (Hayes and Michel 2008, p. 85; Morton 2003, p. 6). Further, removing these sand features can cause or worsen localized erosion by altering depth contours and changing wave refraction (Hayes and Michel 2008, p. 85), potentially degrading other nearby red knot habitats indirectly because inlet dynamics exert a strong influence on the adjacent shorelines. Studying barrier islands in Virginia and North Carolina, Fenster and Dolan (1996, p. 294) found that inlet influences extend 3.4 to 8.1 mi (5.4 to 13.0 km), and that inlets dominate shoreline changes for up to 2.7 mi (4.3 km). Changing the location of dominant channels at inlets can create profound alterations to the adjacent shoreline (Nordstrom 2000, p. 57).

Shoreline Stabilization and Coastal Development—Existing Extent

Existing Extent—Atlantic Coast

The mid-Atlantic coast from New York to Virginia is the most urbanized shoreline in the country, except for parts of Florida and southern California. In New York and New Jersey, hard structures and beach nourishment programs cover much of the coastline. Farther south, there are more undeveloped and preserved sections of coast (Leatherman 1989, p. 2–15). Along the entire Atlantic, most of the ocean coast is fully or partly (intermediate) developed, less than 10 percent is in conservation, and about one-third is undeveloped and still available for new development (see table 3).

By area, more than 80 percent of the land below 3.3 ft (1 m) in Florida and north of Delaware is developed or intermediate. In contrast, only 45 percent of the land from Georgia to Delaware is developed or intermediate (Titus *et al.* 2009, p. 3). However, the 55 percent undeveloped coast in this southern region includes sparsely developed portions of the Chesapeake Bay, and the bay sides of Albermarle and Pamlico Sounds in North Carolina (Titus *et al.* 2009, p. 4), which do not typically support large numbers of red knots (eBird.org 2012). Instead, red knots tend to concentrate along the ocean coasts (eBird.org 2012), which are more heavily developed (Titus *et al.* 2009, p. 4) even in the Southeast. Conservation lands account for most of the Virginia ocean coast, and large parts of Massachusetts, North Carolina, and Georgia, including several key red knot stopover and wintering areas. The proportion of undeveloped land is generally greater at the lowest elevations, except along New Jersey's Atlantic coast (Titus *et al.* 2009, p. 3).

New Jersey's Atlantic coast has the longest history of stabilized barrier island shoreline in North America. It also has the most developed coastal barriers and the highest degree of stabilization in the United States (Nordstrom 2000, p. 3). As measured by the amount of shoreline in the 90 to 100 percent stabilized category, New Jersey is 43 percent hard-stabilized (Pilkey and Wright 1988, p. 46). Of New Jersey's 130 mi (209 km) of coast, 98 mi (158 km) (75 percent) are developed (including 48 mi (77 km) with ongoing beach

nourishment programs), 25 mi (40 km) are preserved (including several areas with existing hard structures), and 7 mi (11 km) are inlets (Gebert 2012, p. 32). Nearly 27 mi (43.5 km) are protected by shore-parallel structures (Nordstrom 2000, pp. 21–22), including 5.6 mi (9 km) of revetments and seawalls, and there are 24 inlet jetties, 368 groins, and 1 breakwater (Hafner 2012, p. 42).

Although much less developed than New Jersey's Atlantic coast, Delaware Bay does have many areas of bulkheads, groins, and jetties (Botton *et al. in* Shuster *et al.* 2003, p. 16). Beach stabilization structures such as bulkheads and riprap account for 4 percent of the Delaware shoreline and 5.6 percent of the New Jersey side. An additional 2.9 and 3.4 percent of the Delaware and New Jersey shorelines, respectively, also have some form of armoring in the back-beach. About 8 percent of the Delaware bayshore is subject to near-shore development. While some beaches in New Jersey and Delaware have had development removed, new development and redevelopment continues on the Delaware side of the bay (Niles *et al.* 2008, p. 40). New Jersey has not conducted beach nourishment in the Delaware Bay, but Delaware has a standing nourishment program in the Bay, and its beaches have been regularly nourished since 1962. Approximately 3 million cubic yards ($yd^3$; 2.3 million cubic meters ($m^3$)) of sand have been placed on Delaware Bay beaches in Delaware over the past 40 years (Smith *et al.* 2002a, p. 5). In 2010, the State of Delaware completed a 10-year management plan for Delaware Bay beaches, with ongoing nourishment recommended as the key measure to protect coastal development (Delaware Department of Natural Resources and Environmental Control 2010, p. 4).

TABLE 3—PERCENT * OF DRY LAND WITHIN 3.3 FT (1 M) OF HIGH WATER BY INTENSITY OF DEVELOPMENT ALONG THE UNITED STATES ATLANTIC COAST

[Titus *et al.* 2009, p. 5]

| | Developed | Intermediate | Undeveloped | Conservation |
|---|---|---|---|---|
| Massachusetts | 26 | 29 | 22 | 23 |
| Rhode Island | 36 | 11 | 48 | 5 |
| Connecticut | 80 | 8 | 7 | 5 |
| New York | 73 | 18 | 4 | 6 |
| New Jersey | 66 | 15 | 12 | 7 |
| Pennsylvania | 49 | 21 | 26 | 4 |
| Delaware | 27 | 26 | 23 | 24 |
| Maryland | 19 | 16 | 56 | 9 |
| District of Columbia | 82 | 5 | 14 | 0 |
| Virginia | 39 | 22 | 32 | 7 |
| North Carolina | 28 | 14 | 55 | 3 |
| South Carolina | 28 | 21 | 41 | 10 |
| Georgia | 27 | 16 | 23 | 34 |
| Florida | 65 | 10 | 12 | 13 |
| Coastwide | 42 | 15 | 33 | 9 |

* Percentages may not add up to 100 due to rounding.

Existing Extent—Southeast Atlantic and Gulf Coasts

The U.S. southeastern coast from North Carolina to Florida is the least urbanized along the Atlantic coast, although both coasts of Florida are urbanizing rapidly. Texas has the most extensive sandy coastline in the Gulf, and much of the area is sparsely developed (Leatherman 1989, p. 2–15). Table 4 gives the miles of developed and undeveloped beach from North Carolina to Texas. (Note the difference between tables 3 and 4; table 3 gives all dry land within 3.3 ft (1 m) of high water, while table 4 is limited to sandy, oceanfront beaches.) Regionwide, about 40 percent of the southeast and Gulf coast is already developed, as shown in table 4. Not all of the remaining 60 percent in the ''undeveloped'' category, however, is still available for development because about 43 percent (about 910 miles) of beaches across this region are considered preserved. Preserved beaches include those in public or nongovernmental conservation ownership and those under conservation easements.

The 43 percent of preserved beaches generally overlap with the undeveloped beach category (1,264 miles or 60 percent, as shown in table 4), but may also include some developed areas such as recreational facilities or private inholdings within parks (USFWS 2012a, p. 15). To account for such recreational or inholding development, we rounded down the estimated preserved, undeveloped beaches to about 40 percent. Adding the preserved, undeveloped 40 percent estimate to the 40 percent that is already developed, we conclude that only about 20 percent of the beaches from North Carolina to Texas are still undeveloped and available for new development. Looking at differences in preservation rates across this region, Georgia and the Mississippi barrier islands have the highest percentages of preserved beaches (76 and 100 percent of shoreline miles, respectively), Alabama and the Mississippi mainland have the lowest percentages (24 and 25 percent of shoreline miles, respectively), and all other States have between 30 and 55 percent of their beach mileage in some form of preservation (USFWS 2012a, p. 15). Table 5 shows the extent of southeast and Gulf coast shoreline with shore-parallel structures, beach nourishment, or both.

TABLE 4—THE LENGTHS AND PERCENTAGES OF SANDY, OCEANFRONT BEACH THAT ARE DEVELOPED AND UNDEVELOPED ALONG THE SOUTHEAST ATLANTIC AND GULF COASTS

[T. Rice pers. comm. January 3, 2013; Rice 2012a, p. 6; USFWS 2012a, p. 15]

| State | Miles of shoreline | Miles and percent of developed beach | Miles and percent of undeveloped beach * |
|---|---|---|---|
| North Carolina | 326 | 159 (49%) | 167 (51%) |
| South Carolina | 182 | 93 (51%) | 89 (49%) |
| Georgia | 90 | 15 (17%) | 75 (83%) |
| Florida | 809 | 459 (57%) | 351 (43%) |
| Alabama | 46 | 25 (55%) | 21 (45%) |
| Mississippi barrier island | 27 | 0 (0%) | 27 (100%) |
| Mississippi mainland ** | 51 | 41 (80%) | 10 (20%) |
| Louisiana | 218 | 13 (6%) | 205 (94%) |
| Texas | 370 | 51 (14%) | 319 (86%) |
| Coastwide | 2,119 | 856 (40%) | 1,264 (60%) |

* Beaches classified as ''undeveloped'' occasionally include a few scattered structures.

** The mainland Mississippi coast along Mississippi Sound includes 51.3 mi of sandy beach as of 2010–2011, out of approximately 80.7 total shoreline miles (the remaining portion is nonsandy, either marsh or armored coastline with no sand).

TABLE 5—APPROXIMATE SHORELINE MILES OF SANDY, OCEANFRONT BEACH THAT HAVE BEEN MODIFIED BY ARMORING WITH HARD EROSION CONTROL STRUCTURES, AND BY SAND PLACEMENT ACTIVITIES, NORTH CAROLINA TO TEXAS, AS OF DECEMBER 2011

[Rice 2012a, p. 7; USFWS 2012a, p. 24]

| | Known approximate miles of armored beach (percent of total coastline) | Known approximate miles of beach receiving sand placement (percent of total coastline) |
|---|---|---|
| North Carolina | Not available | 91.3 (28%) |
| South Carolina | Not available | 67.6 (37%) |
| Georgia | 10.5 (12%) | 5.5 (6%) |
| Florida | 117.3 * | 379.6 (47%) |
| Alabama | 4.7(10%) | 7.5 (16%) |
| Mississippi barrier island | 0 (0%) | 1.1 (4%) |
| Mississippi mainland | 45.4 (89%) | 43.5 (85%) |
| Louisiana | 15.9 (7%) | 60.4 (28%) |
| Texas | 36.6 (10%) | 28.3 (8%) |
| Total * | 230.4 * | 684.8 (32%) |

* Partial data.

Existing Extent—Inlets

Of the nation's top 50 ports active in foreign waterborne commerce, over 90 percent require regular dredging. Over 392 million $yd^3$ (300 million $m^3$) of dredged material are removed from navigation channels each year, not including inland waterways. Most inlets and harbors used for commercial navigation in the United States are protected and stabilized by hard structures (USACE 2002, p. I–3–7). In New Jersey, many inlets that existed around 1885 and all inlets that formed since that time were artificially closed or kept from reopening after natural closure (Nordstrom 2000, p. 19). Five of the 12 New Jersey inlets that now exist are stabilized by jetties, and 2 of the unstabilized jetties are maintained by dredging (Nordstrom 2000, p. 20). Table 6 gives the condition of inlets from North Carolina to Texas.

TABLE 6—INLET CONDITION ALONG THE SOUTHEAST ATLANTIC AND GULF COASTS, DECEMBER 2011

[Rice 2012b, p. 8]

| | Existing inlets | | | | | | | Artificially closed |
|---|---|---|---|---|---|---|---|---|
| | Number of inlets | Number of modified inlets | Habitat modification type | | | | | |
| | | | Structures * | Dredged | Relocated | Mined | Artificially opened | |
| North Carolina | 20 | 17 (85%) | 7 | 16 | 3 | 4 | 2 | 11 |
| South Carolina | 47 | 21 (45%) | 17 | 11 | 2 | 3 | 0 | 1 |
| Georgia | 23 | 6 (26%) | 5 | 3 | 0 | 1 | 0 | 0 |
| Florida east | 21 | 19 (90%) | 19 | 16 | 0 | 3 | 10 | 0 |
| Florida west | 48 | 24 (50%) | 20 | 22 | 0 | 6 | 7 | 1 |

TABLE 6—INLET CONDITION ALONG THE SOUTHEAST ATLANTIC AND GULF COASTS, DECEMBER 2011—Continued
[Rice 2012b, p. 8]

| | Existing inlets | | | | | | | Artificially closed |
|---|---|---|---|---|---|---|---|---|
| | Number of inlets | Number of modified inlets | Habitat modification type | | | | | |
| | | | Structures * | Dredged | Relocated | Mined | Artificially opened | |
| Alabama | 4 | 4 (100%) | 4 | 3 | 0 | 0 | 0 | 2 |
| Mississippi | 6 | 5 (67%) | 0 | 4 | 0 | 0 | 0 | 0 |
| Louisiana | 34 | 10 (29%) | 7 | 9 | 1 | 2 | 0 | 46 |
| Texas | 18 | 14 (78%) | 10 | 13 | 2 | 1 | 11 | 3 |
| Total | 221 | 119 (54%) | 89 (40%) | 97 (44%) | 8 (4%) | 20 (9%) | 30 (14%) | 64 |

* Structures include jetties, terminal groins, groin fields, rock or sandbag revetments, seawalls, and offshore breakwaters.

Shoreline Stabilization and Coastal Development—Future Practices

As shown in tables 3 and 4 and explained above, much of the Atlantic and Gulf coasts are approaching ''buildout,'' the condition that exists when all available land is either developed or preserved and no further development is possible. Table 3 shows that about one-third of dry land within 3.3 ft (1 m) of high tide on the Atlantic coast is still available for development (i.e., not already developed or preserved), but the percent of developable land in or near red knot habitats is probably lower because oceanfront beach areas are already more developed than other lands in this dataset (see Titus *et al.* 2009, p. 4). Focused on beach habitats, USFWS (2012a, p. 15) found that only about 20 percent of the coast from North Carolina to Texas is available for development. In light of sea level rise, it is unclear the extent to which these remaining lands will be developed over the next few decades. Several states already regulate or restrict new coastal development (Titus *et al.* 2009, p. 22; Higgins 2008, pp. 50–53).

However, development pressures continue, driven by tourism (Nordstrom 2000, p. 3; New Jersey Department of Environmental Protection (NJDEP) 2010, p. 1; Gebert 2012, pp. 14, 16), as well as high coastal population densities and rapid population growth. For example, 35 million people—1 of 8 people in the United States—live within 100 mi (161 km) of the New Jersey shore (Gebert 2012, p. 17). Of the 25 most densely populated U.S. counties, 23 are along a coast (USEPA 2012). Population density along the coast is more than five times greater than in inland areas, and coastal populations are expected to grow another 9 percent by 2020 (NOAA 2012b). Coastal population density was greatest in the Northeast as of 2003, but population growth from 1980 to 2003 was greatest in the Southeast (Crossett *et al.* 2004, pp. 4–5).

Although the likely extent of future coastal development is highly uncertain, continued efforts to protect existing and any new developments is more certain, at least over the next 10 to 20 years. As shown in tables 3 and 4, about 40 percent of the coast within the U.S. range of the red knot is already developed, and much of this area is protected by hard or soft means, or both. Shoreline stabilization over the near term is likely to come primarily through the maintenance of existing hard structures along with beach nourishment programs. As described below, it is unknown if these practices can be sustained in the longer term (CCSP 2009b, p. 87), but protection efforts seem likely to continue over shorter timeframes (Kana 2011, p. 34; Titus *et al.* 2009, pp. 2–3; Leatherman 1989, p. 2–27).

States have shown a commitment to beach nourishment that is likely to persist. Of the 18 Atlantic and Gulf coast States with federally approved Coastal Zone Management Programs, 16 have beach nourishment policies. Nine of these 18 States have a continuing funding program for beach nourishment, and 6 more fund projects on a case-by-case basis (Higgins 2008, p. 55). Annual State appropriations for beach nourishment are $25 million in New Jersey and $30 million in Florida (Gebert 2012, p. 18). Beach nourishment has become the default solution to beach erosion because oceanfront property values have risen many times faster than the cost of nourishment (Kana 2011, p. 34). The cost of sand delivery has risen about tenfold since 1950, while oceanfront property values rose about 1,000-fold over the same timeframe. As long as these trends persist, beach nourishment will remain more cost effective than property abandonment (Kana 2011, p. 34; Titus *et al.* 1991, p. 26). Over the next 50 years, Wakefield and Parsons (2002, pp. 5, 8) project that a retreat from the coast (i.e., relocation, abandonment of buildings and infrastructure, or both) in Delaware would cost three times more than a continued beach nourishment program, assuming no decline in cost due to technological advance and no increase due to diminished availability of borrow sediment or accelerated sea level rise.

In attempting to infer the likely future quantity of red knot habitat, major sources of uncertainty are when and where the practice of routine beach nourishment may become unsustainable and how communities will respond. It is uncertain whether beach nourishment will be continued into the future due to economic constraints, as well as often limited supplies of suitable sand resources (CCSP 2009b, p. 49). Despite the current commitment to beach nourishment, it does seem likely that this practice will eventually become unsustainable. Given rising sea levels and increased intensity of storms predicted by climate change models, a steady increase in beach replenishment would be needed to maintain usable beaches and protect coastal development (NJDEP 2010, p. 3). For example, New Jersey has seen a steady increase in costs and volumes of sand since the 1970s (NJDEP 2010, p. 2). For the case where the rate of sea level rise continues to increase, as has been projected by several recent studies, perpetual nourishment becomes impossible since the time between successive nourishment episodes continues to decrease (Weggel 1986, p. 418).

Even if it remains physically possible for beach nourishment to keep pace with sea level rise, this option may be constrained by cost and sand availability (Pietrafesa 2012, entire; NJDEP 2010, p. 2; Titus *et al.* 1991, entire; Leatherman 1989, entire). For example, there is a large deficit of readily available, nearshore sand in some coastal Florida counties (Florida Oceans and Coastal Council 2010, p. 15). To maintain Florida beaches in coming years, local governments will increasingly be forced to look for

suitable sand in other regions of the State and from more expensive or nontraditional sources, such as deeper waters, inland sand mines, or the Bahamas. In Florida's Broward and Miami-Dade Counties, there is estimated to be a net deficit of 34 million $yd^3$ (26 million $m^3$) of sand over the next 50 years (Florida Oceans and Coastal Council 2010, p. 15).

For the Atlantic and Gulf coasts, Titus *et al.* (1991, p. 24) estimated the cumulative cost of beach nourishment in 2100 at $14 billion to $69 billion for a 1.6-ft (0.5-m) sea level rise; $25 billion to $119 billion for a 3.3-ft (1-m) rise; and $56 to $230 billion for a 6.6-ft (2-m) rise. At similar rates of sea level rise, projected costs reach at least $4.1 billion to $10.2 billion by 2040, not adjusted for inflation (Leatherman 1989, p. 2–24). As these cumulative cost projections were produced around 1990, we divided by 110 for Titus *et al.* (1991, p. 24) and by 50 for Leatherman (1989, p. 2–24) to infer a range of estimated annual costs of $82 million to $2.1 billion in 1990 dollars, or about $135 million to $3.5 billion in 2009 dollars (U.S. Bureau of Labor Statistics 2009). For comparison, Congressional appropriations for beach nourishment projects and studies around 2009 totaled about $150 million per fiscal year (NOAA 2009), with the Federal share typically covering 65 percent of a beach nourishment project (NOAA 2000, p. 9), for a total public expenditure of about $231 million. Thus, public spending around 2009 was above the minimum that is expected to be necessary to keep pace with 0.5-m sea level rise ($135 million), but was far below the maximum estimated cost to maintain beaches under the 2-m rise scenario ($3.5 billion). In recent years, Federal funding has not kept pace with some states' demands for beach nourishment (NJDEP 2010, p. 3).

Table 7 shows the estimated nationwide quantities of sand needed to maintain current beaches (including the Pacific and Hawaii, which constitute a small part of the total) through nourishment under various sea level rise scenarios. Tremendous quantities of good quality sand would be necessary to maintain the nation's beaches. These estimates are especially remarkable given that only about 562 million $yd^3$ (430 million $m^3$) of sand were placed from 1922 to 2003 (Peterson and Bishop 2005, p. 887). Almost all of this sand must be derived from offshore, but as of 1989 only enough sand had been identified to accommodate the two lowest sea level rise scenarios over the long term. In addition, available offshore sand is not distributed evenly along the U.S. coast, so some areas will run out of local (the least expensive) sand in a few decades. Costs of beach nourishment increase substantially if sand must be acquired from considerable distance from the beach requiring nourishment (Leatherman 1989, p. 2–21). Further, much more sand would be required to stabilize the shore if barrier island disintegration or segmentation occur (CCSP 2009b, p. 102).

TABLE 7—CUMULATIVE NATIONWIDE ESTIMATES OF SAND QUANTITIES NEEDED (IN MILLIONS OF CUBIC YARDS) TO MAINTAIN CURRENT BEACHES THROUGH NOURISHMENT UNDER VARIOUS SEA LEVEL RISE SCENARIOS

[Leatherman 1989; p. 2–24]

| Global sea level rise by 2100/year | 2.01 ft (0.6 m) | 3.65 ft (1.1 m) | 5.30 ft (1.6 m) | 6.94 ft (2.1 m) |
|---|---|---|---|---|
| 2020 | 405 | 531 | 654 | 778 |
| 2040 | 750 | 1,068 | 1,395 | 1,850 |
| 2100 | 2,424 | 4,345 | 6,768 | 9,071 |

Under current policies, protection of coastal development is standard practice. However, coastal communities were designed and built without recognition of rising sea levels. Most protection structures are designed for current sea level and may not accommodate a significant rise (CCSP 2009b, p. 100). Policymakers have not decided whether the practice of protecting development should continue as sea level rises, or be modified to avoid adverse environmental consequences and increased costs of protecting coastal development (CCSP 2009b, p. 87; Titus *et al.* 2009, entire). It is unclear at what point different areas may be forced by economics or sediment availability to move beyond beach nourishment (Leatherman 1989, p. 2–27). Due to lower costs and sand recycling, sediment backpassing may prolong the ability of communities to maintain artificial beaches in some areas. However, in those times and places that artificial beach maintenance is abandoned, the remaining alternatives would likely be limited to either a retreat from the coast or increased use of hard structures to protect development (CCSP 2009b, p. 87; Defeo *et al.* 2009, p. 7; Wakefield and Parsons 2002, p. 2). Retreat is more likely in areas of lower-density development, while in areas of higher-density development, the use of hard structures may expand substantially (Florida Oceans and Coastal Council 2010, p. 16; Titus *et al.* 2009, pp. 2–3; Defeo *et al.* 2009, p. 7; Wakefield and Parsons 2002, p. 2). The quantity of red knot habitat would be markedly decreased by a proliferation of hard structures. Red knot habitat would be significantly increased by retreat, but only where hard stabilization structures do not exist or where they get dismantled.

Hurricane Sandy recovery efforts show that retreat is not yet being contemplated as an option on the highly developed coasts of New York and New Jersey (Martin 2012, entire; Regional Plan Association, p. 1), and underscore the looming sand shortage that may preclude the continuation of beach nourishment as it has been practiced over recent decades (Dean 2012, entire).

Shoreline Stabilization and Coastal Development—Summary

About 40 percent of the U.S. coastline within the range of the red knot is already developed, and much of this developed area is stabilized by a combination of existing hard structures and ongoing beach nourishment programs. In those portions of the range for which data are available (New Jersey and North Carolina to Texas), about 40 percent of inlets, a preferred red knot habitat, are hard-stabilized, dredged, or both. Hard stabilization structures and dredging degrade and often eliminate existing red knot habitats, and in many cases prevent the formation of new shorebird habitats. Beach nourishment may temporarily maintain suboptimal shorebird habitats where they would otherwise be lost as a result of hard structures, but beach nourishment also has adverse effects to red knots and their habitats. Demographic and economic pressures remain strong to continue existing programs of shoreline stabilization, and to develop additional areas, with an estimated 20 to 33

percent of the coast still available for development. However, we expect existing beach nourishment programs will likely face eventual constraints of budget and sediment availability as sea level rises. In those times and places that artificial beach maintenance is abandoned, the remaining alternatives would likely be limited to either a retreat from the coast or increased use of hard structures to protect development. The quantity of red knot habitat would be markedly decreased by a proliferation of hard structures. Red knot habitat would be significantly increased by retreat, but only where hard stabilization structures do not exist or where they get dismantled. The cumulative loss of habitat across the nonbreeding range could affect the ability of red knots to complete their annual cycles, possibly affecting fitness and survival, and is thereby likely to negatively influence the long-term survival of the rufa red knot.

Factor A—International Coastal Development

The red knot's breeding area is very sparsely developed, and development is not considered a threat in this part of the subspecies' range. We have little information about coastal development in the red knot's non-U.S. migration and wintering areas, compared to U.S. migration and wintering areas. However, escalating pressures caused by the combined effects of population growth, demographic shifts, economic development, and global climate change pose unprecedented threats to sandy beach ecosystems worldwide (DeFeo *et al.* 2009, p. 1; Schlacher *et al.* 2008a, p. 70).

International Development—Canada

Cottage-building to support tourism and expansion of suburbs is taking place along coastal areas of the Bay of Fundy (Provinces of New Brunswick and Nova Scotia) (WHSRN 2012), an important staging area for red knots (Niles *et al.* 2008, p. 30). In addition, the Bay of Fundy supports North America's only tidal electric generating facility that uses the ''head'' created between the water levels at high and low tide to generate electricity (National Energy Board 2006, p. 38). The 20-megawat (MW) Annapolis Tidal Power Plant in Nova Scotia Province is a tidal barrage design, involving a large dam across the river mouth (Nova Scotia Power 2013). Tidal energy helps reduce emissions of greenhouse gases. However, tidal barrage projects can be intrusive to the area surrounding the catch basins (the area into which water flows as the tide comes in), resulting in erosion and silt accumulation (National Energy Board 2006, pp. 39–40).

Although there is good potential for further tidal barrage development in Nova Scotia, with at least two more prospects in the northeast part of the Bay of Fundy, environmental and land use impacts would be carefully assessed. There are no current plans to develop these areas, but Nova Scotia and New Brunswick Provinces and some northeastern U.S. States are studying potential for power generation from tidal currents in the Maritime region (National Energy Board 2006, p. 40). Today, engineers are moving away from tidal barrage designs, in favor of new technologies like turbines that are anchored to the ocean floor. From 2009 to 2010, the Minas Passage in the Bay of Fundy supported a 1–MW in-stream tidal turbine. There is considerable interest in exploring the full potential of this resource (Nova Scotia Energy 2013). The potential impacts to red knot habitat from in-stream generation designs are likely less than barrage designs. However, without careful siting and design, potential for habitat loss exists from the terrestrial development that would likely accompany such projects.

At another important red knot stopover, James Bay, barging has been proposed in connection with diamond mining developments near Attawapiskat on the west coast of the bay. Barging could affect river mouth habitats (COSEWIC 2007, p. 37), for example, through wake-induced erosion.

International Development—Central and South America

Moving from north to south, below is the limited information we have about development in the red knot's Central and South American migration and wintering areas.

In the Costa del Este area of Panama City, Panama, an important shorebird area, prime roosting sites were lost to housing development in the mid-2000s (Niles *et al.* 2008, p. 73). Development is occurring at a rapid rate around Panama Bay, and protections for the bay were recently reduced (Cosier 2012).

Due to the region's remoteness, relatively little is known about threats to red knot habitat in Maranhão, Brazil. Among the key threats that can be identified to date are offshore petroleum exploration on the continental shelf (also see Factor E—Oil Spills and Leaks, and Environmental Contaminants, below), as well as iron ore and gold mining. These activities lead to loss and degradation of coastal habitat through the dumping of soil and urban spread along the coast. Mangrove clearing has also had a negative impact on red knot habitat by altering the deposition of sediments, which leads to a reduction in benthic (bottom-dwelling) prey (WHSRN 2012; Niles *et al.* 2008, p. 97; COSEWIC 2007, p. 37). Threats to shorebird habitat also exist from salt extraction operations (WHSRN 2012). In addition to industrial development, some areas with good access have potential for tourism; however, most areas are inaccessible (WHSRN 2012).

Development is a threat to red knot stopover habitat along the Patagonian coast of Argentina. In the Bahía Samborombón reserve, Argentina's northernmost red knot stopover site, threats come from urban and agrosystem expansion and development (Niles *et al.* 2008, p. 98).

Further south, the beaches along Bahía San Antonio, Argentina, are a key red knot stopover (Niles *et al.* 2008, p. 19). The City of San Antonio Oeste has nearly 20,000 inhabitants and many more seasonal visitors (WHSRN 2012). Just one beach on Bahía San Antonio draws 300,000 tourists every summer, a number that has increased 20 percent per year over the past decade. New access points, buildings, and tourist amusement facilities are being constructed along the beach. Until recently, there was little planning for this rapid expansion. In 2005, the first urban management plan for the area advised restricted use of land close to key shorebird areas, which include extensive dune parks. Public land ownership includes the City's shoreline, beaches, and a regional port for shipping produce and soda ash (WHSRN 2012).

Habitat loss and deterioration are among the threats confronting the urban shorebird reserves at Río Gallegos, an important red knot site in Patagonia (Niles *et al.* 2008, p. 19). As the city of Río Gallegos grew toward the coast, ecologically productive tidal flats and marshes were filled for housing and used as urban solid waste dumps and disposal sites for untreated sewage, leading to the loss of roosting areas and the loss and modification of the feeding areas (WHSRN 2012; Niles *et al.* 2008, p. 98; Ferrari *et al.* 2002, p. 39), in part as a result of wind-blown trash from a nearby landfill being deposited in shorebird habitats (Niles *et al.* 2008, p. 98; Ferrari *et al.* 2002, p. 39) (see Factor E—Environmental Contaminants). While the creation of the reserve stopped most of these development practices, the lots that had been approved prior to the reserve's establishment have continued to be filled. In addition, a public works project to treat the previously dumped

effluents is under construction, necessitating the use of heavy equipment and the crossing of several stretches of salt marshes and mud flats used by the shorebirds. Activities outside the shorebird reserve also have potential to impact red knots. While the tidal flat and salt marsh zones most important to shorebirds are located within the reserves, the land uses of adjacent areas include recreation, fishing, cattle ranching, urban development, and three ports. In an effort to address some of these concerns, local institutions and various nongovernmental organizations are working together to reassess the coastal environment and promote its management and conservation (WHSRN 2012).

Two of Argentina's Patagonian provinces (Río Negro that includes San Antonio Oeste, and Santa Cruz that includes Río Gallegos) have declared the conservation of migratory shorebirds to be ''in the Provincial interest'' and made it illegal to modify wetland habitat important for shorebirds (WHSRN 2011).

Ongoing development continues to encroach in parts of Argentinean Tierra del Fuego, an important red knot wintering area (Niles *et al.* 2008, p. 17). In the area called Pasos de las Cholgas, the land immediately behind the coast has been divided, and two homes are under construction. Over time, if no urban management plan is developed, development of this area could affect red knots and their habitat. South of Pasos de las Cholgas to the mouth of the Carmen Silva River (Chico), shorebirds have disappeared and trash is deposited by the wind from the city landfill. The municipality of Río Grande is working on relocating the landfill. Also nearby, a methanol and urea plant are under construction, with plans to build two seaports, one for the company and another for the public. Between Cape Domingo and Cape Peñas is the City of Río Grande, population 80,000. In the past 25 years, the city has increased its industrial economic growth and, in turn, its population. This rapid growth was not guided by an urban management plan. The coast shows signs of deterioration from industrial activities and effects from port construction, quarries, a concrete plant, trash dumps, plants and pipelines for wastewater treatment, and debris. Río Grande City is working closely with the Provincial government to reverse the coastal degradation. One of the projects under way is the construction of an interpretive trail along the coast that teaches visitors about the marine environment and wetlands, and the importance of migratory birds as indicators of healthy environments (WHSRN 2012).

International Development—Summary

Relative to the United States, little is known about development-related threats to the red knot's nonbreeding habitat in other countries. Residential and recreational development is occurring along the Bay of Fundy in Canada, a red knot stopover site. The Bay of Fundy also has considerable potential for the expansion of electric generation from tidal energy, but new power plant developments are likely to minimize environmental impacts relative to older designs. Industrial development is considered a threat to red knot habitat along the north coast of Brazil, but relatively little is known about this region. Urban development is a localized threat to red knot habitats in Panama, along the Patagonian coast of Argentina, and in the Argentinean portion of Tierra del Fuego. Over the past decade, shorebird conservation efforts, including the establishment of shorebird reserves and the initiation of urban planning, have begun in many of these areas. However, human population and development continue to grow in many areas. In some key wintering and stopover sites, development pressures are likely to exacerbate the habitat impacts caused by sea level rise (discussed previously).

Factor A—Beach Cleaning

On beaches that are heavily used for tourism, mechanical beach cleaning (also called beach grooming or raking) is a common practice to remove wrack (seaweed and other organic debris are deposited by the tides), litter, and other natural or manmade debris by raking or sieving the sand, often with heavy equipment (Defeo *et al.* 2009, p. 4). Beach raking became common practice in New Jersey in the late 1980s (Nordstrom and Mauriello 2001, p. 23) and is increasingly common in the Southeast, especially in Florida (M. Bimbi pers. comm. November 1, 2012). Wrack removal and beach raking both occur on the Gulf beach side of the developed portion of South Padre Island in the Lower Laguna Madre in Texas (USFWS 2012a, p. 28), a well-documented red knot habitat (Newstead *et al.* in press). On the Southeast Atlantic and Gulf coasts, beach cleaning occurs on private beaches and on some municipal or county beaches that are used by red knots (M. Bimbi pers. comm. November 1, 2012). Most wrack removal on state and Federal lands is limited to post-storm cleanup and does not occur regularly (USFWS 2012a, p. 28).

Practiced routinely, beach cleaning can cause considerable physical changes to the beach ecosystem. In addition to removing humanmade debris, beach cleaning and raking machines remove accumulated wrack, topographic depressions, emergent foredunes and hummocks, and sparse vegetation (USFWS 2012a, p. 28; Defeo *et al.* 2009, p. 4; Nordstrom and Mauriello 2001, p. 23; Nordstrom 2000, p. 53), all of which can be important microhabitats for shorebirds and their prey. Many of these changes promote erosion. Grooming loosens the beach surface by breaking up surface crusts (salt and algae) and lag elements (shells or gravel), and roughens or ''fluffs'' the sand, all of which increase the erosive effects of wind (Cathcart and Melby 2009, p. 14; Defeo *et al.* 2009, p. 4; Nordstrom 2000, p. 53). Grooming can also result in abnormally broad unvegetated zones that are inhospitable to dune formation or plant colonization, thereby enhancing the likelihood of erosion (Defeo *et al.* 2009, p. 4). By removing vegetation and wrack, cleaning machines also reduce or eliminate natural sand-trapping features, further destabilizing the beach (USFWS 2012a, p. 28; Nordstrom *et al.* 2006b, p. 1266; Nordstrom 2000, p. 53). Further, the sand adhering to seaweed and trapped in the cracks and crevices of wrack is lost to the beach when the wrack is removed; although the amount of sand lost during a single sweeping activity is small, over a period of years this loss could be significant (USFWS 2012a, p. 28). Cathcart and Melby (2009, pp. i, 14) found that beach raking and grooming practices on mainland Mississippi beaches exacerbate the erosion process and shorten the time interval between beach nourishment projects (see discussion of shoreline stabilization, above). In addition to promoting erosion, raking also interferes with the natural cycles of dune growth and destruction on the beach (Nordstrom and Mauriello 2001, p. 23).

Wrack removal also has significant ecological consequences, especially in regions with high levels of marine macrophyte (e.g., seaweed) production. The community structure of sandy beach macroinvertebrates can be closely linked to wrack deposits, which provide both a food source and a microhabitat refuge against desiccation (drying out). Wrack-associated animals, such as amphipods, isopods, and insects, are significantly reduced in species richness, abundance, and biomass by beach grooming (Defeo *et al.* 2009, p. 4). Invertebrates in the wrack are a primary prey base for some shorebirds such as

piping plovers (USFWS 2012a, p. 28), but generally make up only a secondary part of the red knot diet (see the ''Wintering and Migration Food'' section of the Rufa Red Knot Ecology and Abundance supplemental document). Overall shorebird numbers are positively correlated with wrack cover and the biomass of their invertebrate prey that feed on wrack; therefore, grooming can lower bird numbers (USFWS 2012a, p. 28; Defeo *et al.* 2009, p. 4). Due to their specialization on benthic, intertidal mollusks, red knots may be less impacted by these effects than some other shorebird species. However, removal of wrack may cause more significant localized effects to red knots at those times and places where abundant mussel spat are attached to deposits of tide-cast material, or where red knots become more reliant on wrack-associated prey species such as amphipods, insects, and marine worms. In Delaware Bay, red knots preferentially feed in the wrack line because horseshoe crab eggs become concentrated there (Nordstrom *et al.* 2006a, p. 438; Karpanty *et al.* 2011, pp. 990, 992); however, removal of wrack material is not practiced along Delaware Bay beaches (K. Clark pers. comm. February 11, 2013; A. Dey and K. Kalasz pers. comm. February 8, 2013). (More substantial threats to the red knot's prey resources are discussed under Factor E, below.)

The heavy equipment used in beach grooming can cause disturbance to red knots (see Factor E—Human Disturbance, below). Only minimal disturbance is likely to occur on mid-Atlantic and northern Atlantic beaches because raking in these areas is most prevalent from Memorial Day to Labor Day, when only small numbers of red knots typically occur in this region.

In summary, the practice of intensive beach raking may cause physical changes to beaches that degrade their suitability as red knot habitat. Removal of wrack may also have an effect on the availability of red knot food resources, particularly in those times and places that birds are more reliant on wrack-associated prey items. Beach cleaning machines are likely to cause disturbance to roosting and foraging red knots, particularly in the U.S. wintering range. Mechanized beach cleaning is widespread within the red knot's U.S. range, particularly in developed areas. We anticipate beach grooming may expand in some areas that become more developed but may decrease in other areas due to increasing environmental regulations, such as restrictions on beach raking in piping plover nesting areas (e.g., Nordstrom and Mauriello 2001, p. 23).

Factor A—Invasive Vegetation

Defeo *et al.* (2009, p. 6) cited biological invasions of both plants and animals as global threats to sandy beaches, with the potential to alter food webs, nutrient cycling, and invertebrate assemblages. Although the extent of the threat is uncertain, this may be due to poor survey coverage more than an absence of invasions. The propensity of invasive species to spread, and their tenacity once established, make them a persistent problem that is only partially countered by increasing awareness and willingness of beach managers to undertake control efforts (USFWS 2012a, p. 27). Like most invasive species, exotic coastal plants tend to reproduce and spread quickly and exhibit dense growth habits, often outcompeting native plants. If left uncontrolled, invasive plants can cause a habitat shift from open or sparsely vegetated sand to dense vegetation, resulting in the loss or degradation of red knot roosting habitat, which is especially important during high tides and migration periods. Many invasive species are either affecting or have the potential to affect coastal beaches (USFWS 2012a, p. 27), and thus red knot habitat.

Beach vitex (*Vitex rotundifolia*) is a woody vine introduced into the Southeast as a dune stabilization and ornamental plant that has spread from Virginia to Florida and west to Texas (Westbrooks and Madsen 2006, pp. 1–2). There are hundreds of beach vitex occurrences in North and South Carolina, and a small number of known locations in Georgia and Florida. Targeted beach vitex eradication efforts have been undertaken in the Carolinas (USFWS 2012a, p. 27). Crowfootgrass (*Dactyloctenium aegyptium*), which grows invasively along portions of the Florida coastline, forms thick bunches or mats that can change the vegetative structure of coastal plant communities and thus alter shorebird habitat (USFWS 2009, p. 37).

Japanese (or Asiatic) sand sedge (*Carex kobomugi*) is a 4- to 12-in (10- to 30-cm) tall perennial sedge adapted to coastal beaches and dunes (Plant Conservation Alliance 2005, p. 1; Invasive Plant Atlas of New England undated). The species occurs from Massachusetts to North Carolina (U.S. Department of Agriculture (USDA) 2013) and spreads primarily by vegetative means through production of underground rhizomes (horizontal stems) (Plant Conservation Alliance 2005, p. 2). Japanese sand sedge forms dense stands on coastal dunes, outcompeting native vegetation and increasing vulnerability to erosion (Plant Conservation Alliance 2005, p. 1; Invasive Plant Atlas of New England undated). In the 2000s, Wootton (2009) documented rapid (exponential) growth in the spread of Japanese sand sedge at two New Jersey sites that are known to support shorebirds.

Australian pine (*Casuarina equisetifolia*) is not a true pine, but is actually a flowering plant. Australian pine affects shorebirds by encroaching on foraging and roosting habitat and may also provide perches for avian predators (USFWS 2012a, p. 27; Bahamas National Trust 2010, p. 1). Native to Australia and southern Asia, Australian pine is now found in all tropical and many subtropical areas of the world. This species occurs on nearly all islands of the Bahamas (Bahamas National Trust 2010, p. 2), and is among the three worst invasive exotic trees damaging wildlife habitat throughout South Florida (City of Sanibel undated). Growing well in sandy soils and salt tolerant, Australian pine is most common along shorelines (Bahamas National Trust 2010, p. 2), where it grows in dense monocultures with thick mats of acidic needles (City of Sanibel undated). In the Bahamas, Australian pine often spreads to the edge of the intertidal zone, effectively usurping all shorebird roosting habitat (A. Hecht pers. comm. December 6, 2012). In addition to directly encroaching into shorebird habitats, Australian pine contributes to beach loss through physical alteration of the dune system (Stibolt 2011; Bahamas National Trust 2010, p. 2; City of Sanibel undated). The State of Florida prohibits the sale, transport, and planting of Australian pine (Stibolt 2011; City of Sanibel undated).

In summary, red knots require open habitats that allow them to see potential predators and that are away from tall perches used by avian predators. Invasive species, particularly woody species, degrade or eliminate the suitability of red knot roosting and foraging habitats by forming dense stands of vegetation. Although not a primary cause of habitat loss, invasive species can be a regionally important contributor to the overall loss and degradation of the red knot's nonbreeding habitat.

Factor A—Agriculture and Aquaculture

In some localized areas within the red knot's range, agricultural activities or aquaculture are impacting habitat quantity and quality. For example, on the Magdalen Islands, Canada (Province

of Quebec), clam farming is a new and growing local business. The clam farming location overlaps with the feeding grounds of transient red knots, and foraging habitats are being affected. Clam farming involves extracting all the juvenile clams from an area and relocating them in a ''nursery area'' nearby. The top sand layer (upper 3.9 in (10 cm) of sand) is removed and filtered. Only the clams are kept, and the remaining fauna is rejected on the site. This disturbance of benthic fauna could affect foraging rates and weight gain in red knots by removing prey, disturbing birds, and altering habitat. This pilot clam farming project could expand into more demand for clam farming in other red knot feeding areas in Canada (USFWS 2011b, p. 23) (also see Factor E—Reduced Food Availability, below).

Luckenbach (2007, p. 15) found that aquaculture of clams (*Mercenaria mercenaria*) in the lower Chesapeake Bay occurs in close proximity to shorebird foraging areas. The current distribution of clam aquaculture in the very low intertidal zone minimizes the amount of direct overlap with shorebird foraging habitats, but if clam aquaculture expands farther into the intertidal zone, more shorebird impacts (e.g., habitat alteration) may occur. However, these Chesapeake Bay intertidal zones are not considered the primary habitat for red knots (Cohen *et al.* 2009, p. 940), and red knots were not among the shorebirds observed in this study (Luckenbach 2007, p. 11). Likewise, oyster aquaculture is practiced in Delaware Bay (NJDEP 2011, pp. 1–10), but we have no information to indicate that this activity is affecting red knots.

Shrimp (Family Penaeidae, mainly *Litopenaeus vannamei*) farming has expanded rapidly in Brazil in recent decades. Particularly since 1998, extensive areas of mangroves and salt flats, important shorebird habitats, have been converted to shrimp ponds (Carlos *et al.* 2010, p. 1). In addition to causing habitat conversion, shrimp farm development has caused deforestation of river margins (e.g., for pumping stations), pollution of coastal waters, and changes in estuarine and tidal flat water dynamics (Campos 2007, p. 23; Zitello 2007, p. 21). Ninety-seven percent of Brazil's shrimp production is in the Northeast region of the country (Zitello 2007, p. 4). Carlos *et al.* (2010, p. 48) evaluated aerial imagery from 1988 to 2008 along 435 mi (700 km) of Brazil's northeast coastline in the States of Piauí, Ceará, and Rio Grande do Norte, covering 20 estuaries. Over this 20-year period, shrimp farms increased by 36,644 acres (ac) (14,829 hectares (ha)), while salt flats decreased by 34,842 ac (14,100 ha) and mangroves decreased by 2,876 ac (1,164 ha) (Carlos *et al.* 2010, pp. 54, 75).

In the region of Brazil with the most intensive shrimp farming (the Northeast), newer surveys have documented more red knots than were previously known to use this area. In winter aerial surveys of Northeast Brazil in 1983, Morrison and Ross (1989, Vol. 2, pp. 149, 183) documented only 15 red knots in the States of Ceará, Piauí, and eastern Maranhão. However, ground surveys in the State of Ceará in December 2007 documented an average peak count of 481 ± 31 red knots at just one site, Cajuais Bank (Carlos *et al.* 2010 pp. 10–11). Cajuais Bank also supports considerable numbers of red knots during migration, with an average peak count of 434 ± 95 in September 2007 (Carlos *et al.* 2010, pp. 10–11). Over this 1-year study, red knots were the most numerous shorebird at Cajuais Bank, accounting for nearly 25 percent of observations (Carlos *et al.* 2010, p. 9). Red knots that utilize Northeast Brazil were likely affected by recent habitat losses and degradation from the expansion of shrimp farming.

Farther west along the North-Central coast of Brazil, the western part of Maranhão and extending into the State of Pará is considered an important red knot concentration area during both winter and migration (D. Mizrahi pers. com. November 17, 2012; Niles *et al.* 2008, p. 48; Baker *et al.* 2005, p. 12; Morrison and Ross 1989 Vol. 2, pp. 149, 183). Shrimp farm development has been far less extensive in Maranhão and Pará than in Brazil's Northeast region (Campos 2007, pp. 3–4). However, rapid or unregulated expansion of shrimp farming in Maranhão and Pará could pose an important threat to this key red knot wintering and stopover area (WHSRN 2012). In addition to aquaculture, some fishing is practiced in Maranhão, but the area is fairly protected from conversion to land-based agriculture by its high salinity and inaccessibility (WHSRN 2012). Fishing activities could potentially cause disturbance or alter habitat conditions.

On the east coast of Brazil, Lagoa do Peixe serves as an important migration stopover for red knots. The abundance and availability of the red knot's food supply (snails) are dependent on the lagoon's water levels. The lagoon's natural fluctuations, and the coastal processes that allow for an annual connection of the lagoon with the sea, are altered by farmers draining water from farm fields into the lagoon. The hydrology of the lagoon is also affected by upland pine (*Pinus* spp.) plantations that cause siltation and lower the water table (Niles *et al.* 2008, pp. 97–98). These coastal habitats are also degraded by extensive upland cattle grazing, farming of food crops, and commercial shrimp farming. Fishermen also harvest from the lagoon and the sea, with trawlers setting nets along the coast (WHSRN 2012). Fishing activities could potentially cause disturbance or alter habitat conditions.

The red knot wintering and stopover area of Río Gallegos is located on the south coast of Argentina. The lands surrounding the estuary have historically been used for raising cattle. During the past few years significant areas of brush land (that had served as a buffer) next to the shorebird reserve have been cleared and designated for agricultural use and the establishment of small farms. This loss of buffer areas may cause an increase in disturbance of the shorebirds (WHSRN 2012) because agricultural activities within visual distance of roosting or foraging shorebirds, including red knots, may cause the birds to flush.

Grazing of the upland buffer is also a problem at Bahía Lomas in Chilean Tierra del Fuego. The government owns all intertidal land and an upland buffer extending 262 ft (80 m) above the highest high tide, but ranchers graze sheep into the intertidal vegetation. Landowners have indicated willingness to relocate fencing to exclude sheep from the intertidal area and the upland buffer, but as of 2011, funding was needed to implement this work (L. Niles pers. comm. March 2, 2011). Grazing in the intertidal zone could potentially displace roosting and foraging red knots, as well as degrade the quality of habitat through trampling, grazing, and feces.

In summary, moderate numbers of red knots that winter or stopover in Northeast Brazil are likely impacted by past and ongoing habitat loss and degradation due to the rapid expansion of shrimp farming. Expansion of shrimp farming in North-Central Brazil, if it occurs, would affect far more red knots. Farming practices around Lagoa do Peixe are degrading habitats at this red knot stopover site, and localized clam farming in Canada could degrade habitat quality and prey availability for transient red knots. Agriculture is contributing to habitat loss and degradation at Río Gallegos in Argentina, and probably at other localized areas within the range of the red knot. However, clam farming in the Chesapeake Bay does not appear to be impacting red knots at this time. Agriculture and aquaculture activities are a minor but locally important contributor to overall loss and

degradation of the red knot's nonbreeding habitat.

Factor A—Breeding Habitat Loss From Warming Arctic Conditions

For several decades, surface air temperatures in the Arctic have warmed at approximately twice the global rate. Areas above 60 degrees (°) north latitude (around the middle of Hudson Bay) have experienced an average temperature increase of 1.8 to 3.6 degrees Fahrenheit (°F) (1 to 2 degrees Celsius (°C)) since a temperature minimum in the 1960s and 1970s (IPCC 2007c, p. 656). From 1954 to 2003, mean annual temperatures across most of Arctic Canada increased by as much as 3.6 to 5.4 °F (2 to 3 °C), and warming in this region has been pronounced since 1966 (Arctic Climate Impact Assessment (ACIA) 2005, p. 1101). Increased atmospheric concentrations of greenhouse gases are ''very likely'' to have a larger effect on climate in the Arctic than anywhere else on the globe. (The ACIA (2005, pp. 607) report uses likelihood terminology similar, but not identical, to that used by the IPCC; see supplemental document—Climate Change Background—table 1). Under two mid-range emissions scenarios, models predict a mean global temperature increase of 4.5 to 6.3 °F (2.5 to 3.5 °C) by 2100, while the predicted increase in the Arctic is 9 to 12.6 °F (5 to 7 °C). Under both emission scenarios, arctic temperatures are predicted to rise 4.5 °F (2.5 °C) by mid-century. Under the lower of these two emissions scenarios, some of the highest temperature increases in the Arctic (9 °F; 5 °C) in 2100 are predicted to occur in the Canadian Archipelago (ACIA 2005, p. 100), where the red knot breeds.

To evaluate predicted changes in breeding habitat resulting from climate change, we note the eco-regional classification of the red knot's current breeding range. Most of the red knot's current breeding range (see supplemental document—Rufa Red Knot Ecology and Abundance—figure 1, and Niles *et al.* 2008, p. 16) is classified as High Arctic, although some known and potential nesting areas are at the northern limits of the Low Arctic zone (CAFF 2010, p. 11). Based on mapping by the World Wildlife Fund (WWF) (2012) and modeling by Kaplan *et al.* (2003, p. 6), the red knot breeding range appears to correspond with the hemiarctic (i.e., ''middle Arctic'') zone described by ACIA (2005, p. 258). The region of known and potential breeding habitat is classified by the Canada Map Office (1989; 1993) as sparsely vegetated tundra, and most of the breeding range is classified by the WWF as Middle Arctic Tundra. Mapping by ACIA (2005, p. 5), based on Kaplan *et al.* (2003, entire), classifies almost all of the red knot breeding range as tundra, with only some small areas of potential breeding habitat on Melville and Bathurst Islands classified as polar desert. Kaplan *et al.* (2003, p. 6) mapped nearly all of the red knot breeding range as ''prostrate dwarf-shrub tundra,'' which is defined as discontinuous shrubland of prostrate (low-growing) deciduous shrubs, 0 to 0.8 in (0 to 2 cm) tall, typically vegetated with willow (*Salix* spp.), avens (*Dryas* spp.), *Pedicularis,* Asteraceae, Caryophyllaceae, grasses, sedges, and true moss species (Kaplan *et al.* 2003, p. 3).

Arctic Warming—Eco-Regional Changes

Arctic plants, animals, and microorganisms have adapted to climate change in the geologic past primarily by relocation, and their main response to future climate change is also likely to be through relocation. In many areas of the Arctic, however, relocation possibilities will likely be limited by regional and geographical barriers (ACIA 2005, p. 997). The Canadian High Arctic is characterized by land fragmentation within the archipelago and by large glaciated areas that can constrain species' movement and establishment (ACIA 2005, p. 1012). Even if red knots are physically capable of relocating, some important elements of their breeding habitat (e.g., vegetative elements, prey species) may not have such capacity, and thus red knots may not be ecologically capable of relocation.

Where their migration is not prevented by regional and geographic barriers, vegetation zones are generally expected to migrate north in response to warming conditions. Warming is ''very likely'' to lead to slow northward displacement of tundra by forests, while tundra will in turn displace High Arctic polar desert; tundra is projected to decrease to its smallest extent in the last 21,000 years, shrinking by a predicted 33 to 44 percent by 2100 (Feng *et al.* 2012, pp. 1359, 1366; Meltofte *et al.* 2007, p. 35; ACIA 2005, pp. 991, 998). Projections suggest that arctic ecosystems could change more in the next 100 years than they did over the last 6,000 years (Kaplan *et al.* 2003, pp. 1–2), which is longer than the rufa red knot is thought to have existed as a subspecies (Buehler *et al.* 2006, p. 485; Buehler and Baker 2005, p. 505), suggesting that these ecosystem changes may exceed the knot's adaptive capacity.

Arctic communities are ''very likely'' to respond strongly and rapidly to high-latitude temperature change (ACIA 2005, p. 257). The likely initial response of arctic communities to warming is an increase in the diversity of plants, animals, and microbes, but reduced dominance of currently widespread species (ACIA 2005, p. 263). Species that are important community dominants are likely to have a particularly rapid and strong effect on ecosystem processes where regional warming occurs. Hemiarctic plant species (those that occur throughout the Arctic, but most frequently in the middle Arctic) include several community dominants, such as grass, sedge, moss, and *Dryas* species (ACIA 2005, pp. 257–258), primary vegetative components of red knot nesting habitat (Niles *et al.* 2008, p. 27). Due to the current widespread distribution of these hemiarctic plants, their initial responses to climatic warming are likely to be increased productivity and abundance, probably followed by northward extension of their ranges (ACIA 2005, p. 257).

Temperature is not the only factor that currently prevents some plant species from occurring in the Arctic. Latitude is also important, as life cycles depend not only on temperature but on the light regime as well. It is very likely that arctic species will tolerate warmer summers, whereas long day lengths will initially restrict the distribution of some subarctic species. This scenario will ''very likely'' cause new plant communities to arise with a novel species composition and structure, unlike any that exist now (ACIA 2005, p. 259).

Studies have already documented shifts in arctic vegetation. For example, the ''greenness'' of North American tundra vegetation has increased during the period of satellite observations, 1982 to 2010 (Walker *et al. in* Richter-Menge *et al.* 2011, p. 89). Over the 29-year record, North America saw an increase in the maximum Normalized Difference Vegetation Index (NDVI, a measure of vegetation photosynthetic capacity) but no significant shift in timing of peak greenness and no significant trend toward a longer growing season. However, whole-continent data can mask changes along latitudinal gradients and in different regions. For example, looking only at the Low Arctic (from 1982 to 2003), maximum NDVI showed about a 1-week shift in the initiation of ''green-up,'' and a somewhat higher NDVI late in the growing season. The Canadian High Arctic did not show earlier initiation of greenness, but did show a roughly 1- to

2-week shift toward earlier maximum NDVI (Walker *et al. in* Richter-Menge *et al.* 2011, pp. 91–92). Several studies have also found increases in plant biomass linked to warming arctic temperatures (Epstein *et al.* 2012, p. 1; Hill and Henry 2011, p. 276; Hudson and Henry 2009, p. 2657). Observations from near the Lewis Glacier, Baffin Island, Canada, documented rapid vegetation changes along the margins of large retreating glaciers, and these changes may be partly responsible for large NDVI changes observed in northern Canada and Greenland (Bhatt *et al.* 2010, p. 2). Such ongoing changes to plant productivity will affect many aspects of arctic systems, including changes to active-layer depths, permafrost, and biodiversity (Bhatt *et al.* 2010, p. 2).

In addition, the disappearance of dense ice cover on large parts of the Arctic Ocean may eliminate cooling effects on adjacent lands (Piersma and Lindström 2004, p. 66) and may cause the High Arctic climate to become more maritime-dominated, a habitat condition in which few shorebirds breed (Meltofte *et al.* 2007, p. 36). Indeed, Bhatt *et al.* (2010, pp. 1–2) used NDVI to document temporal relationships between near-coastal sea ice, summer tundra land surface temperatures, and vegetation productivity. These authors found that changes in sea ice conditions have the strongest effect on ecosystems (e.g., accelerated warming, vegetation changes) immediately adjacent to the coast, but the terrestrial effects of sea ice changes also extend far inland. Ecosystems that are currently adjacent to year-round sea ice are likely to experience the greatest changes (Bhatt *et al.* 2010, pp. 1–2). Summer sea-ice extent decreased by about 7 percent per decade from 1972 to 2002, the extent of multiyear sea ice has decreased, and ice thickness in the Arctic Basin has decreased by up to 40 percent since the 1950s and 1960s due to climate-related and other factors. Sea-ice extent is ''very likely'' to continue to decrease, with predictive modeling results ranging from loss of several percent to complete loss (ACIA 2005, p. 997). Based on data since 2001, Stroeve *et al.* (2012, p. 1005) suggested that the rate of sea ice loss is accelerating, and the National Aeronautics and Space Administration (NASA 2012) reported that the extent of summer sea ice in 2012 was the smallest on record (during the satellite era). As red knots typically nest near (within about 30 mi (50 km) of) arctic coasts (Niles *et al.* 2008, p. 27; Niles *et al. in* Baker 2001, p. 14), their nesting habitats are vulnerable to accelerated temperature and vegetative changes and increasing maritime influence due to loss of sea ice.

In addition to changes in plant communities and loss of sea ice, changes in freshwater hydrology of red knot breeding habitats are expected. Arctic freshwater systems, key foraging areas for red knots (Niles *et al.* 2008, p. 27), are particularly sensitive to even small changes in climatic regimes. Hydrologic processes may change gradually but may also respond abruptly as environmental thresholds are exceeded (ACIA 2005, p. 1012). Rising global temperatures are expected to result in permafrost degradation, possible decline in precipitation, and lowering of water tables, leading to drying of marshes and ponds in the southern parts of the Arctic (ACIA 2005, p. 418; Meltofte *et al.* 2007, p. 35). Conversely, thawing permafrost and increasing precipitation are very likely to increase the occurrence and distribution of shallow wetlands (ACIA 2005, p. 418) in other portions of the Arctic. We cannot predict the likely net changes in wetland availability within the red knot's breeding range over coming decades.

Arctic Warming—Effects on Red Knot Habitat

In the long term, loss of tundra breeding habitat is a serious threat to shorebird species. The preferred habitats of shorebird populations that breed in the High Arctic are predicted to decrease or disappear as vegetation zones move northward (Meltofte *et al.* 2007, p. 34; Lindström and Agrell 1999, p. 145). High Arctic shorebirds such as the red knot seem to be particularly at risk, because the High Arctic already constitutes a relatively limited area ''squeezed in'' between the extensive Low Arctic biome and the Arctic Ocean (Meltofte *et al.* 2007, p. 35). In a circumpolar assessment of climate change impacts on Arctic-breeding waterbirds, Zöckler and Lysenko (2000, pp. 5, 13) concluded that most of the Calidrid shorebirds (*Calidris* and related species) will not be able to adapt to shrubby or treelike habitats, but they note that habitat area may not be the most important factor limiting population size or breeding success.

Potential impacts to shorebirds from changing arctic ecosystems go well beyond the loss of tundra breeding habitat (e.g., see Fraser *et al.* 2013; entire; Schmidt *et al.* 2012, p. 4421; Meltofte *et al.* 2007, p. 35; Ims and Fuglei 2005, entire). In the southern Arctic, loss of freshwater habitats may have more immediate effects on shorebird populations than the expansion of shrubs and trees (Meltofte *et al.* 2007, p. 35; ACIA 2005, p. 418). A continuation of warm summers may lead to more and different predators, parasites, and pathogens. Northward expansion of Low Arctic and possibly sub-Arctic breeding shorebirds may lead to interspecific competition for an increasingly limited supply of suitable nesting habitat (Meltofte *et al.* 2007, p. 35).

It is unlikely that any major changes in the extent of *Calidris canutus* breeding habitat have occurred to date, but long-term changes in breeding habitat resulting from climate change are likely to negatively affect this species in the future (COSEWIC 2007, p. 16). Using two early-generation climate models and two different climate scenarios (temperature increases of 3 and 9 °F (1.7 and 5 °C)), Zöckler and Lysenko (2000, pp. iii, 8) predicted 16 to 33 percent loss of breeding habitat across all *Calidris canutus* subspecies by 2070 to 2099. Some authors (Meltofte *et al.* 2007, p. 36; Piersma and Lindström 2004, p. 66) have suggested that the 16 to 33 percent prediction is low, in part because it does not reflect ecological changes beyond outright loss of tundra. In 2007, COSEWIC concluded that, as the High Arctic zone is expected to shift north, *C. canutus* is likely to be among the species most affected. This would be the case particularly for populations breeding toward the southern part of the High Arctic zone, such as the *rufa* subspecies breeding in the central Canadian Arctic (COSEWIC 2007, p. 40), as such areas would be the first converted from tundra vegetation to shrubs and trees.

Using multiple, recent-generation climate models and three emissions scenarios, Feng *et al.* (2012, p. 1366) found that tundra in northern Canada would be pushed poleward to the coast of the Arctic Ocean and adjacent islands and would be replaced by boreal forests and shrubs by 2040 to 2059. By 2080 to 2099, the tundra would be restricted to the islands of the Arctic Ocean, with total loss of tundra in some current red knot breeding areas (e.g., Southampton Island) (Feng *et al.* 2012, p. 1366). The findings of Feng *et al.* (2012, p. 1366) support previous mapping by ACIA (2005, p. 991) that shows the treeline migrating north to overlap with the southern end of the red knot breeding range, including Southampton Island, by 2100.

Vegetation changes may go beyond the replacement of tundra by forest and include the northward migration of vegetative subtypes within the remaining tundra zone. While predictions show forest establishment

limited to the southern end of the red knot's current breeding range by 2100, migration of tundra subtypes may be widespread across the breeding range. A simulation by Kaplan *et al.* (2003, p. 10) showed that the current vegetative community (prostrate dwarf-shrub tundra) would be replaced by taller, denser vegetative communities throughout the entire known and potential breeding range by 2090 to 2100. The prostrate dwarf-shrub tundra would migrate north beyond the current breeding range of *Calidris canutus rufa* into the range of *C.c. islandica,* where it would replace the current community of cushion forb, lichen, and moss tundra (Kaplan *et al.* 2003, p. 10). This simulation was not intended as a realistic forward projection and did not include the potentially significant feedbacks between land surface and atmosphere. Instead, the simulation was meant to show one possible course of vegetative change and illustrate the sensitivity of arctic ecosystems to climate change (Kaplan *et al.* 2003, p. 2). However, such changes in the Arctic may already be under way, as several studies have found increased shrub abundance, biomass, and cover; increased plant canopy heights; and decreased prevalence of bare ground (Elmendorf *et al.* 2012a, p. 1; Elmendorf *et al.* 2012b; Myers-Smith *et al.* 2011, p. 2; Walker *et al. in* Richter-Menge *et al.* 2011, p. 93).

Arctic Warming—Summary

Arctic regions are warming much faster than the global average rates, and the Canadian Archipelago is predicted to experience some of the fastest warming in the Arctic. Red knots currently breed in a region of sparse, low tundra vegetation within the southern part of the High Arctic and the northern limits of the Low Arctic. Forests are expected to colonize the southern part of the red knot's current breeding range by 2100, and vegetation throughout the entire breeding range may become taller and denser and with less bare ground, potentially making it unsuitable for red knot nesting. These changes may be accelerated near coastlines, where red knots breed, due to the loss of sea ice that currently cools the adjacent land. Loss of sea ice may also make the central Canadian island habitats more maritime-dominated and, therefore, less suitable for breeding shorebirds. The red knot's breeding range may also experience changes in freshwater wetland foraging habitats, as well as unpredictable but profound ecosystem changes (e.g., interactions among predators, prey, and competitors). The red knot's adaptive capacity to withstand these changes in place, or to shift its breeding range northward, is unknown (also see Factor B, and Cumulative Effects, below).

Factor A—Conservation Efforts

We are unaware of any broad-scale conservation measures to reduce the threat of destruction, modification, or curtailment of the red knot's habitat or range. Specifically, no conservation measures are specifically aimed at reducing sea level rise or warming conditions in the Arctic. As described in the sections above, shorebird reserves have been established at several key red knot sites in South America, and regional efforts are in progress to develop and implement urban development plans to help protect red knot habitats at some of these sites. In the United States, the Service is working with partners to minimize the effects of shoreline stabilization on shorebirds and other beach species (e.g., Rice 2009, entire), and there are efforts in Delaware Bay to maintain horseshoe crab spawning habitat (and, therefore, red knot foraging habitat) via beach nourishment (e.g., Niles *et al.* 2013, entire; USACE 2012, entire; Kalasz 2008, entire). In addition, local or regional efforts are ongoing to control several species of invasive beach vegetation. While additional best management practices could be implemented to address shoreline development and stabilization, beach cleaning, invasive species, agriculture, and aquaculture, we do not have any information that specific, large-scale actions are being taken to address these concerns such that those efforts would benefit red knot populations or the subspecies as a whole. See the supplemental document ''Factor D: Inadequacies of Existing Regulatory Mechanisms'' regarding regulatory mechanisms relevant to coastal development, shoreline stabilization, beach cleaning, and invasive species.

Factor A—Summary

Within the nonbreeding portion of the range, red knot habitat is primarily threatened by the highly interrelated effects of sea level rise, shoreline stabilization, and coastal development. The primary red knot foraging habitats, intertidal flats and sandy beaches, will likely be locally or regionally inundated as sea levels rise, but replacement habitats are likely to re-form along eroding shorelines in their new positions. However, if shorelines experience a decades-long period of rapid sea level rise, high instability, and landward migration, the formation rate of new foraging habitats may be slower than the inundation rate of existing habitats. In addition, low-lying and narrow islands (e.g., in the Caribbean, along the Gulf and Atlantic coasts) may disintegrate rather than migrate, representing a net loss of red knot habitat.

Superimposed on changes from sea level rise are widespread human efforts to stabilize the shoreline, which are known to exacerbate losses of intertidal habitats by blocking their landward migration. About 40 percent of the U.S. coastline within the range of the red knot is already developed, and much of this developed area is stabilized by a combination of existing hard structures and ongoing beach nourishment programs. Hard stabilization structures and dredging degrade and often eliminate existing red knot habitats, and in many cases prevent the formation of new shorebird habitats. Beach nourishment may temporarily maintain suboptimal shorebird habitats where they would otherwise be lost as a result of hard structures, but beach nourishment also has adverse effects to red knots and their habitats. In those times and places where artificial beach maintenance is abandoned, the remaining alternatives available to coastal communities would likely be limited to either a retreat from the coast or increased use of hard structures to protect development. The quantity of red knot habitat would be markedly decreased by a proliferation of hard structures. Red knot habitat would be significantly increased by retreat, but only where hard stabilization structures do not exist or where they get dismantled. Relative to the United States, little is known about development-related threats to red knot nonbreeding habitat in other countries. However, in some key international wintering and stopover sites, development pressures are likely to exacerbate habitat impacts caused by sea level rise.

Lesser threats to nonbreeding habitat include beach cleaning, invasive vegetation, agriculture, and aquaculture. The practice of intensive beach raking may cause physical changes to beaches that degrade their suitability as red knot habitat. Although not a primary cause of habitat loss, invasive vegetation can be a regionally important contributor to the overall loss and degradation of the red knot's nonbreeding habitat. Agriculture and aquaculture are a minor but locally important contributor to overall loss and degradation of the red knot's nonbreeding habitat, particularly for moderate numbers of red knots that winter or stopover in Northeast Brazil where habitats were likely impacted by

the rapid expansion of shrimp farming since 1998.

Within the breeding portion of the range, the primary threat to red knot habitat is from climate change. With arctic warming, vegetation conditions on the breeding grounds are expected to change, causing the zone of nesting habitat to shift north and perhaps contract. These effects may be exacerbated by loss of sea ice. Arctic freshwater systems, foraging areas for red knots during the nesting season, are particularly sensitive to climate change. Unpredictable but profound ecosystem changes (e.g., interactions among predators, prey, and competitors) may also occur.

Threats to the red knot from habitat destruction and modification are occurring throughout the entire range of the subspecies. These threats include climate change, shoreline stabilization, and coastal development, exacerbated regionally or locally by lesser habitat-related threats such as beach cleaning, invasive vegetation, agriculture, and aquaculture. The subspecies-level impacts from these activities are expected to continue into the future.

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

In this section, we discuss historic shorebird hunting in the United States that caused a substantial red knot population decline, ongoing shorebird hunting in parts of the Caribbean and South America, and potential effects to red knots from scientific study.

Factor B—Hunting

Since the late 19th century, hunters concerned about the future of wildlife and the outdoor tradition have made countless contributions to conservation. In many cases, managed hunting is an important tool for wildlife management. However, unregulated or illegal hunting can cause population declines, as was documented in the 1800s for red knots in the United States. While no longer a concern in the United States, underregulated or illegal hunting of red knots and other shorebirds is ongoing in parts of the Caribbean and South America.

Hunting—United States (Historical)

Red knots were heavily hunted for both market and sport during the 19th and early 20th centuries (Harrington 2001, p. 22) in the Northeast and the mid-Atlantic. Red knot population declines were noted by several authors of the day, whose writings recorded a period of intensive hunting followed by the introduction of regulations and at least partial population recovery. As early as 1829, Wilson (1829, p. 140) described the red knot as a favorite among hunters and bringing a good market price. Giraud (1844, p. 225) described red knot hunting in the South Bay of Long Island. Noting confusion over species common names, Roosevelt (1866, pp. 91–96) reported that hunting of ''bay snipe'' (a name applied to several shorebird species including red knot) primarily occurred from Cape Cod to New Jersey, rarely south of Virginia. Specific to red knots, Roosevelt (1866, p. 151) noted they were ''killed indiscriminately . . . with the other bay-birds.'' Hinting at shorebird population declines, Roosevelt (1866, pp. 95–96) found that ''the sport [of bay snipe shooting] has greatly diminished of late . . . a few years ago . . . it was no unusual thing to expend twenty-five pounds of shot in a day, where now the sportsman that could use up five would be fortunate.''

Mackay (1893, p. 29) described a practice on Cape Cod during the 1850s called ''fire-lighting,'' involving night-time hand-harvest via lantern light. In just one instance, ''six barrels'' of red knots taken by fire-lighting were shipped to Boston (Mackay 1893, p. 29). Fire-lighting continued ''several years'' before it was banned (Mackay 1893, p. 29). Red knots continued to be taken ''in large numbers on the Atlantic seaboard (Virginia) . . . one such place shipping to New York City in a single spring, from April 1 to June 3, upwards of six thousand Plover, a large share of which were Knots'' (Mackay 1893, p. 30). Mackay (1893, p. 30) concluded that red knots were ''in great danger of extinction.''

Shriner (1897, p. 94) reported, ''This bird was formerly very plentiful in migrations in New Jersey, but it has been killed off to a great extent, proving an easy prey for pothunters,'' and Eaton (1910, p. 94) described red knots as ''much less common than formerly.'' Echoing Mackay (1893), Forbush (1912, pp. 262–266) cited numerous sources in describing a substantial coastwide decline in red knot numbers, and concluded, ''The decrease is probably due . . . to shooting both spring and fall all along our coasts, and possibly to some extent in South America . . . its extirpation from the Atlantic coast of North America is [possible] in the near future.''

By 1927, Bent (1927, p. 132) noted signs of red knot population recovery, ''Excessive shooting, both in spring and fall reduced this species to a pitiful remnant of its former numbers; but spring shooting was stopped before it was too late and afterwards this bird was wisely taken off the list of game birds; it has increased slowly since then, but is far from abundant now.'' Urner and Storer (1949, pp. 192–193) reached the same conclusion, and documented population increases along New Jersey's Atlantic coast from 1931 to 1938. Based on his bird studies of Cape May, New Jersey, Stone (1937, p. 465) concluded that the red knot population decline had not been as sharp as previously thought, and that ''since the abolishing of the shooting of shore birds it has steadily increased in abundance.'' It is unclear whether the red knot population fully recovered its historical numbers (Harrington 2001, p. 22) following the period of unregulated hunting, and it is possible this episode reduced the species' resilience to face other threats that emerged over the course of the 20th century. However, legal hunting of red knots is no longer allowed in the United States, and there is no indication of illegal hunting from any part of its mainland U.S. range.

Hunting—Caribbean and South America (Current)

Both legal and illegal sport and subsistence hunting of shorebirds takes place in several known red knot wintering and migration stopover areas. This analysis focuses on areas where both red knots and hunting are known to occur, although in many areas we lack specific information regarding levels of red knot mortality from hunting. Therefore, we document the activity and explain that red knots could be affected, but draw no conclusions about direct mortality unless specifically noted.

Moving from north to south, hunting is known from the Bahamas, including Andros, but it is not known if shorebirds specifically are hunted (B. Andres pers. comm. December 21, 2011); red knot hunting is prohibited by law (see supplemental document—Factor D). Likewise, hunting is considered a general threat to birds in Cuba but no specific information is available (B. Andres pers. comm. December 21, 2011). Regulated sport hunting occurs in Jamaica, but red knots are among the protected bird species for which hunting is prohibited in that country's wildlife law. Hunting occurs in Haiti, but information is not available specific to shorebirds (B. Andres pers. comm. December 21, 2011). U.S. laws including the Endangered Species Act (regulating take of listed species) and the Migratory Bird Treaty Act (MBTA) (regulating harvest of migratory birds) apply in Puerto Rico and the U.S. Virgin Islands. In Puerto Rico, hunting is strictly regulated and permitted only for

certain species, but enforcement is lacking and nonlicensed hunters outnumber legal hunters. In the U.S. Virgin Islands, unregulated legal hunting, as well as poaching, has extirpated the West Indian whistling-duck (*Dendrocygna arborea*) (B. Andres pers. comm. December 21, 2011). General enforcement of hunting regulations is lacking in the U.S. Virgin Islands, but shorebird hunting is negligible (B. Andres pers. comm. February 5, 2013 and December 21, 2011).

Hunting birds is popular in Trinidad and Tobago. Seabird colonies are threatened by poachers who collect the adult birds for meat and presumably also take the eggs. In addition to seabirds, species at particular risk from hunting include several species of wading birds, fowl, and waterfowl (B. Andres pers. comm. December 21, 2011). Although hunters generally target larger waterbirds, harvest is a threat to shorebirds as well. There are about 750 hunters (on both Trinidad and Tobago), the season ranges from November to February, and there are no bag limits (USFWS 2011e, p. 4). Red knot hunting is prohibited by law in Belize and Uruguay.

Current Hunting—Lesser Antilles Shooting Swamps

In parts of the Lesser Antilles, legal sport hunters target shorebirds in ''shooting swamps.'' Most of the migratory shorebird species breeding in eastern North America and the Arctic pass through the Caribbean during late August and September on their way to wintering areas. When they encounter severe storms during migration, the birds use the islands as refuges before moving on to their final destinations. Hunting clubs take advantage of these events to shoot large numbers of shorebirds at one time (Nebel 2011, p. 217).

Lesser Antilles—Barbados

Barbados has a tradition of legal shorebird hunting that began with the colonists in the 17th and 18th centuries. The current shooting swamps were artificially created and can attract large numbers of migrant shorebirds during inclement weather. The open season for shorebirds is July 15 to October 15, and there is no daily bag limit. Several species are protected, and hunters have voluntarily agreed to stop the harvest of red knots. Work is in progress to gather current mortality levels and develop a model of sustainable shorebird harvest. To date, half of the shooting swamps on Barbados have agreed to furnish harvest data (USFWS 2011e, p. 2). As of 1991, Hutt (pp. 77–78) estimated that fewer than 100 hunters killed 15,000 to 20,000 shorebirds per year at 7 major shooting swamps. Although conservation progress has been made, the number of shorebirds killed annually is still around 26,000. Hunters have a partial agreement with the conservation community to lower the annual shorebirds harvest to 22,500 (Eubanks 2011).

Although hunting pressure on shorebirds remains high, red knots have not been documented in Barbados in large numbers. The red knot is a regular fall transient, usually occurring as single individuals and in small groups in late August and early September, and typically utilizing coastal swamps during adverse weather (Hutt and Hutt 1992, p. 70; Hutt 1991, p. 89). Detailed records from 1950 to 1965 show an average of about 20 red knots per year. Red knots may occur very exceptionally in flocks of up to a dozen birds; a record of 63 birds—brought in by a storm—were shot in 1 day in 1951 (Hutt and Hutt 1992, p. 70). From 1990 to 1992, seven shooting swamps were active, and red knot mortality was reported from two of the swamps; nine red knots were shot at Best Pond, and one was shot at Woodbourne. Due to its coastal location, Best Pond attracted more red knots than other shooting swamps, but it has been closed to hunting due to residential development (W. Burke pers. comm. October 12, 2011), and Woodbourne has been restored as a ''no-shoot'' shorebird refuge (BirdLife International 2009; Burke 2009, p. 287). The remaining shooting swamps in Barbados no longer target red knots, and only a few knots have been observed in recent years (W. Burke pers. comm. October 12, 2011).

Lesser Antilles—French West Indies

The French West Indies consist of Guadeloupe and its dependencies, Martinique, Saint Martin, and Saint Barthélemy. To date, red knots have been reported only from Guadeloupe (eBird.org 2012).

Like Barbados, legal sport hunting of shorebirds has a long tradition on the French territories of Guadeloupe and Martinique (USFWS 2011e, p. 3). Wetlands are not managed for shorebird hunting in Guadeloupe, but are sometimes on Martinique (USFWS 2011e, p. 3). However, Guadeloupe has several isolated mangrove swamps that serve to concentrate shorebirds for shooting (Nebel 2011, p. 217). Approximately 1,400 hunters on Martinique and 3,000 hunters on Guadeloupe harvest 14 to 15 shorebird species, which are typically eaten. The hunting season runs from July to January, and no daily bag limits are set. The shorebird hunting pressure in the French West Indies may be greater than on Barbados. There are no reliable estimates for the magnitude of the harvest; however, a single hunter has been known to harvest 500 to 1,000 shorebirds per season. Work is ongoing to more accurately determine the magnitude of the shorebird harvest in the French West Indies (USFWS 2011e, p. 3).

Although shorebird hunting has been previously documented on Guadeloupe (USFWS 2011e, p. 3), the issue gained notoriety in September 2011 when two whimbrels (*Numenius phaeopus*), fitted with satellite transmitters as part of a 4-year tracking study, were killed by hunters. The 2 birds were the first of 17 tracked whimbrels to stop on Guadeloupe; they were not migrating together, but both stopped on the island after encountering different storm systems. As both whimbrels were shot in a known shooting swamp within hours of arriving on Guadeloupe, the circumstances of these two documented mortalities suggest that shorebird hunting pressure may be very high (Smith *et al.* 2011b). Like other overseas territories, Guadeloupe is not covered by key European laws for biodiversity conservation (Nebel 2011, p. 217). Following the shooting of the tracked whimbrels, conservation groups launched an appeal for the protection of birds and their habitats in French overseas departments in the Caribbean and elsewhere (Nebel 2011, p. 217). The French Government has recently acted to impose new protective measures in Guadeloupe. The National Hunting and Wildlife Agency has begun negotiating bag limits and is working on a new regulation that would stop hunting for 5 days following a tropical storm warning, but these measures are not yet in effect (A. Levesque pers. comm. January 8, 2013; Niles 2012c). Significantly, the red knot was recently added to the list of protected species, and hunter education about red knots is in progress (A. Levesque pers. comm. January 8, 2013; Niles 2012c).

Although the red knot was (until recently) listed as a game bird, mortality from hunting was probably low because red knots occur only in small numbers. In Guadeloupe, the red knot is an uncommon but regular visitor during fall migration, typically in groups of 1 to 3 birds, but as many as 16 have been observed in 1 flock. Probably no more than a few dozen red knots were shot per year in Guadeloupe (A. Levesque pers. comm. October 11, 2011), prior to its protected designation.

Current Hunting—The Guianas

Band recoveries indicate that red knots are killed commonly for food in some regions of South America, especially in the Guianas (i.e., Suriname, Guyana, and French Guiana). The overall take from these activities is unknown, but the number of band recoveries (about 17) in the Guianas hints that the take may be substantial (Harrington 2001, p. 22). More recently two additional bands were recovered from red knots shot in French Guiana (D. Mizrahi pers. comm. October 16, 2011). One of these birds, shot in a rice field near Mana in May 2011, was banded in Delaware Bay in May 2005 and was subsequently resighted over 30 times in New Jersey, Delaware, and Florida (J. Parvin pers. comm. September 12, 2011).

Rice fields and other impoundments are prevalent in French Guiana and Guyana (USFWS 2011e, p. 3). In the rice fields near Mana, French Guiana, more than 1,700 red knots were observed in late August 2012 (Niles 2012b). During the same timeframe, about 30 new shotgun shells per kilometer were collected along the dikes around the fields. This estimated density of spent shotgun shells is a minimum as some of the dikes were swept by the tides and most were overgrown with vegetation, limiting detectability. In addition to observing the indirect evidence of hunting, researchers saw two people with guns during 4 days in the field (Niles 2012b). Shorebirds are harvested legally in French Guiana and Guyana, although the magnitude of the harvest is unknown (USFWS 2011e, p. 3). Shorebird hunting is unregulated in French Guiana (A. Levesque pers. comm. January 8, 2013; D. Mizrahi pers. comm. October 16, 2011), which is an overseas region of France.

Harvest of any shorebirds has been illegal in Suriname since 2002, but there is little enforcement. Law enforcement is hampered by limited resources (e.g., working boats, gasoline), and several tens of thousands of shorebirds are trapped and shot each year. A 2006 survey indicated that virtually all shorebird species occurring in Suriname were illegally hunted and trapped in some quantity, with the lesser yellowlegs (*Tringa flavipes*) and semipalmated sandpiper (*Calidris pusilla*) being the dominant species. The survey also documented an illegal food trade of shorebirds, including selling to local markets. Shorebirds are harvested by shooting, netting, and using choke wires. Many shorebirds are taken by Guyanese fishermen working in Suriname. The Suriname coast is mainly mudflats and much of the coast is legally protected. Three coastal areas in Suriname are designated as sites of hemispheric importance by WHSRN, and it is likely that hunting occurs in at least two of them. Education and awareness programs have begun along the coast of Suriname, and a hunter training program is being developed (USFWS 2011e, p. 3).

Red knots are primarily passage migrants in the Guyanas, with many more birds documented in French Guiana (Niles 2012b) than in Suriname, where the habitat is not ideal for red knots (B. Harrington pers. comm. March 31, 2006; Spaans 1978, p. 72). Based on work in Suriname and French Guiana since 2008, D. Mizrahi (pers. comm. October 16, 2011) suspects that red knot mortality from hunting in these countries may be an order of magnitude higher than in Guadeloupe, given the much larger stopover populations (i.e., hundreds of birds) that have been observed in the Guianas. As described under Species Information above, red knots and other shorebirds are known to segregate by sex during migration. The effects of hunting would be far greater if mortality disproportionately affects adult females (D. Mizrahi pers. comm. October 16, 2011), which may predominate red knot aggregations at certain times of the year.

Current Hunting—Brazil

Hunting migratory shorebirds for food was previously common among local communities in Maranhão, Brazil. Shorebirds provided an alternative source of protein, and birds like the red knot with high subcutaneous fat content for long migratory flights were particularly valued. According to local people, red knot was among the most consumed species, although no data are available to document the number of birds taken. Local people say that, although some shorebirds are still hunted, this practice has greatly decreased over the past decade, and hunting is not thought to amount to a serious cause of mortality (Niles *et al.* 2008, p. 99). Outside the State of Maranhão, hunting pressure on red knots has not been characterized. For some bird species, unregulated subsistence hunting in Brazil may be causing species declines (R. Huffines pers. comm. September 13, 2011).

Commercial and recreational hunting are prohibited in all Brazilian territory, except for the state of Rio Grande do Sul, which includes the Logoa do Peixe stopover site. The Rio Grande do Sul hunting law provides a list of animals that can be hunted, prohibits trapping, and bans commercialized hunting (B. Andres pers. comm. December 21, 2011). Poaching is known from waterbird colonies in Brazil (B. Andres pers. comm. December 21, 2011), but no information is available regarding any illegal shorebird harvest.

Factor B—Scientific Study

About 1,000 red knots per year are trapped for scientific study in Delaware Bay, and about 300 in South America (Niles *et al.* 2008, p. 100). In some years, additional birds are trapped in other parts of the range (e.g., Newstead *et al.* in press; Schwarzer *et al.* 2012, p. 728; Baker *et al.* 2005, p. 13). In an effort to further understand the red knot's rates of weight gain, migratory movements, survival rates, and conservation needs, the trapped birds are weighed and measured, leg-banded, and fitted with individually numbered color-flags. In some years, coordinated tissue sampling (e.g., feathers, blood, mouth swabs) is conducted for various scientific studies (Niles *et al.* 2008, p. 100), such as contaminants testing, stable isotope analysis, or genetic research. Prolonged captivity or excessive handling during these banding operations can cause *Calidris canutus* to rapidly lose weight, about 0.04 ounces (oz) (1 gram (g)) per hour (L. Niles and H. Sitters pers. comm. September 4, 2008; Davidson 1984, p. 1724). In rare circumstances, *C. canutus* held in captivity during banding, especially when temperatures are high, can develop muscle cramps that can be fatal or leave birds vulnerable to predators (Rogers *et al.* 2004, p. 157).

Through 2008, about 50 of the birds caught in Delaware Bay each year were the subject of radiotelemetry studies in which a 0.1-oz (2-g) radio tag was glued to the back of each bird (Niles *et al.* 2008, p. 100). Additional birds were recently radio-tracked in Texas (Newstead pers. comm. August 20, 2012). The tags are expected to drop off after 1 to 2 months through the natural replacement of skin. Resighting studies in subsequent years showed that the annual survival of radio-tagged birds was no different from that of birds that had only been banded (Niles *et al.* 2008, p. 100). In more recent years, tens of red knots have been fitted with geolocators. After 1 year, researchers found no significant differences in the resighting rates of birds carrying geolocators, suggesting that these devices did not affect survival (Niles *et al.* 2010a, p. 123).

Considerable care is taken to minimize disturbance caused to shorebirds from these research activities. Numbers of birds per catch and total numbers caught over the

season are limited, and careful handling protocols are followed, including a 3-hour limit on holding times (Niles *et al.* 2010a, p. 124; L. Niles and H. Sitters pers. comm. September 4, 2008; Niles *et al.* 2008). Despite these measures, hundreds of red knots are temporarily stressed during the course of annual research, and mortality, though rare, does occasionally occur (K. Clark pers. comm. January 21, 2013; Taylor 1981, p. 241). However, we conclude that these research activities are not a threat to the red knot because evaluations have shown no effects of these short-term stresses on red knot survival. Further, the rare, carefully documented, and properly permitted mortality of an individual bird in the course of well-founded research does not affect red knot populations or the overall subspecies.

Factor B—Conservation Efforts

As discussed above, a few countries where shorebird hunting is legal have implemented voluntary restrictions on red knot hunting, increased hunter education efforts, established ''no-shoot'' shorebird refuges, and are developing models of sustainable harvest. Ongoing scientific research has benefitted red knot conservation in general and, through leg-band recoveries, has provided documentation of hunting-related mortality. Research activities adhere to best practices for the careful capture and handling of red knots.

Factor B—Summary

Legal and illegal sport and market hunting in the mid-Atlantic and Northeast United States substantially reduced red knot populations in the 1800s, and we do not know if the subspecies ever fully recovered its former abundance or distribution. Neither legal nor illegal hunting are currently a threat to red knots in the United States, but both occur in the Caribbean and parts of South America. Hunting pressure on red knots and other shorebirds in the northern Caribbean and on Trinidad is unknown. Hunting pressure on shorebirds in the Lesser Antilles (e.g., Barbados, Guadeloupe) is very high, but only small numbers of red knots have been documented on these islands, so past mortality may not have exceeded tens of birds per year. Red knots are no longer being targeted in Barbados or Guadeloupe, and other measures to regulate shorebird hunting on these islands are being negotiated. Much larger numbers (thousands) of red knots occur in the Guianas, where legal and illegal subsistence shorebird hunting is common. About 20 red knot mortalities have been documented in the Guianas, but total red knot hunting mortality in this region cannot be surmised. Subsistence shorebird hunting was also common in northern Brazil, but has decreased in recent decades. We have no evidence that hunting was a driving factor in red knot population declines in the 2000s, or that hunting pressure is increasing. In addition, catch limits, handling protocols, and studies on the effects of research activities on survival all indicate that overutilization for scientific purposes is not a threat to the red knot.

Threats to the red knot from overutilization for commercial, recreational, scientific, or educational purposes exist in parts of the Caribbean and South America. Specifically, legal and illegal hunting does occur. While red knot mortality is documented, we have no information to suggest that mortality levels are high enough to affect red knot populations or the subspecies as a whole. We expect mortality of individual knots from hunting to continue into the future, but at stable or decreasing levels due to the recent international attention to shorebird hunting.

Factor C. Disease or Predation

Red knots are exposed to several diseases and experience variable rates of predation from avian and mammalian predators throughout their range. In this section, we discuss known parasites and viruses, and the direct and indirect effects of predation in the red knot's breeding, wintering, and migration areas.

Factor C—Disease

Red knots are exposed to parasites and disease throughout their annual cycle. Susceptibility to disease may be higher when the energy demands of migration have weakened the immune system. Studying red knots in Delaware Bay in 2007, Buehler *et al.* (2010, p. 394) found that several indices of immune function were lower in birds recovering protein after migration than in birds storing fat to fuel the next leg of the migration. These authors hypothesized that fueling birds may have an increased rate of infection or may be bolstering immune defense, or recovering birds may be immuno-compromised because of the physical strain of migratory flight or as a result of adaptive energy tradeoffs between immune function and migration, or both (Buehler *et al.* 2010, p. 394). A number of known parasites and viruses are described below, but we have no evidence that disease is a current threat to the red knot.

Disease—Parasites

An epizootic disease (epidemic simultaneously affecting many animals) that caused illness or death of about 150 red knots on the west coast of Florida in December 1973 and November 1974 was caused by a protozoan (single-celled organism) parasite, most likely an undescribed sporozoan (reproducing by spores) species (USFWS 2003, p. 22; Harrington 2001, p. 21, Woodward *et al.* 1977, p. 338).

On April 7, 1997, 26 red knots, 10 white-rumped sandpipers (*Calidris fuscicollis*), and 3 sanderlings (*Calidris alba*) were found dead or dying along 6.2 mi (10 km) of beach at Lagoa do Peixe in southern Brazil. The following day, another 13 dead or sick red knots were found along 21.7 mi (35 km) of nearby beach (Niles *et al.* 2008, p. 101; Baker *et al.* 1998, p. 74). All 35 red knots were heavily infected with hookworms (Phylum Acanthocephala), which punctured their intestines. Although hookworms can cause sudden deaths in birds, the lungs of some birds were discolored, suggesting there may have been an additional factor in their mortality. Three white-rumped sandpipers and three sanderlings were also examined, and none appeared to be infected with hookworms, again suggesting another cause of death. Bacterial agents and environmental contaminants were not ruled out (Baker *et al.* 1998, p. 75), but Harrington (2001, p. 21) attributed the deaths to the hookworms. Smaller mortalities of spring migrants with similar symptoms were also reported from Uruguay in the 2000s (Niles *et al.* 2008, p. 101).

Blood parasites represent a complex, spatially heterogeneous host-parasite system having ecological and evolutionary impacts on host populations. Three closely related genera, (*Plasmodium, Haemoproteus* and *Leucocytozoon*) are commonly found in wild birds, and infections in highly susceptible species or age classes may result in death (D'Amico *et al.* 2008, p. 195). Reported red knot mortalities in Florida in 1981 were attributed to the blood parasite *Plasmodium hermani* (Niles *et al.* 2008, p. 101; Harrington 2001, p. 21). However, no blood parasites (*Plasmodium, Haemoproteus* or *Leucocytozoon* spp.) were found in red knots sampled in 2004 and 2005 in Tierra del Fuego (181 samples), Maranhão, Brazil (52 samples), or Delaware Bay (140 samples), and this finding is consistent with the generally low incidence of blood parasite vectors along marine shores (D'Amico *et al.* 2008, pp. 193, 197). No blood parasites

(*Plasmodium* or *Haemoproteus* spp.) were detected in 156 red knots sampled at 2 sites in Argentina (Río Grande and San Antonio Oeste) in 2005 and 2006 (D'Amico *et al.* 2007, p. 794).

In 2008, Escudero *et al.* (2012, pp. 362–363) observed a high prevalence of a Digenea parasitic flatworm (*Bartolius pierrei*) in clams (*Darina solenoids*), a major prey item of red knots foraging at Río Grande in Argentinean Tierra del Fuego. Clams near the surface of the sediment were the most highly infected by the flatworm, and were preferentially eaten by red knots, probably due to their larger size. While digenean worm parasites may be part of the natural intestinal fauna of red knots, parasites are detrimental by definition. It is likely that the adult stage of this parasite living in the intestines and stomach causes either damage or an immunological response, adversely affecting the condition of the host birds (Escudero *et al.* 2012, p. 363). Farther north, at Fracasso Beach, Península Valdés, Argentina, Cremonte (2004, p. 1591) found that *B. pierrei* uses the clam *Darina solenoides* as its intermediate host. The red knot and a gull species (Family Laridae) act as definitive hosts, with 92 percent of red knots infected. *Bartolius pierrei* did not parasitize other invertebrates that share the intertidal habitat with *D. solenoides,* suggesting the parasite may be adapted to target red knot prey species. *Bartolius pierrei* is an endemic parasite of the Magellan region, distributed where its intermediate clam host is present, from San José Gulf in Península Valdés to the southern tip of South America (Cremonte 2004, p. 1591). To date, the impacts of flatworm infection on red knot health or fitness have not been investigated.

Ectoparasites, which live on the surface of the body, can affect birds by directly hindering their success in obtaining food and by acting as vectors and invertebrate hosts to microorganisms. For example, lice and mites infest skin and feathers leaving their hosts susceptible to secondary infections (D'Amico *et al.* 2008, p. 195). Individual red knots examined in 1968 (New York) and 1980 (Massachusetts) were infested with bird lice (Mallophaga (Amblycera): Menoponidae), which live in the feather shafts. Based on the bird examined in 1980, the lice likely caused that red knot to molt some primary feathers, known as an adventitious molt. Other than the molt, this red knot appeared healthy (Taylor 1981, p. 241). In the course of ongoing field studies in Maranhão, Brazil, all 38 knots caught and sampled in February 2005 were found to be heavily infected with ectoparasites. The birds were also extremely lightweight, less than the usual fat-free mass of red knots (Baker *et al.* 2005, p. 15). Fieldworkers have also noticed ectoparasites on a substantial number of red knots caught in Delaware Bay (Niles *et al.* 2008, p. 101).

D'Amico *et al.* (2008, pp. 193, 197) examined red knots for ectoparasites at three sites in 2004 and 2005. All ectoparasites observed during this study were feather lice (Phthiraptera: Mallophaga (Amblycera)). Only 5 of 113 (4 percent) of red knots examined on Tierra del Fuego in Río Grande, Argentina, had ectoparasites, while all 36 knots (100 percent) examined in Maranhão, Brazil, were infected. Almost 40 percent of the Brazilian birds had very high parasite loads. Of 256 red knots examined in Delaware Bay, 174 (68 percent) had ectoparasites. Using feather isotopes from the Delaware Bay birds, D'Amico *et al.* (2008, p. 197) identified 90 of the 256 birds as coming from northern wintering areas (e.g., Brazil, the Southeast) and 66 from southern wintering areas (e.g., Tierra del Fuego) (the wintering region of the remaining 100 birds was unknown). The proportions of parasitized birds captured at Delaware Bay from the different wintering regions were not significantly different (50 percent from northern areas infected versus 40 percent from southern areas). However, the northern-wintering red knots tended to have higher loads of ectoparasites (i.e., more parasites per bird). These data suggest that many southern birds may be infected during a short stopover during the northward migration or by direct contact in Delaware Bay (D'Amico *et al.* 2008, pp. 193, 197). To date, the impacts of ectoparasite infection on red knot health or fitness have not been investigated.

Associating characteristics of breeding and wintering habitats, chick energetics, and apparent immunocompetence (the ability of the body to produce a normal immune response following exposure to disease), Piersma (1997, p. 623) suggested that shorebird species make tradeoffs of immune system function versus growth and sustained exercise. This author suggested that these tradeoffs determine the use of particular habitat types by long-distance migrating shorebirds. Some species appear restricted to parasite-poor habitats such as the Arctic tundra and exposed seashores, where small investments in the immune system may suffice and even allow for high chick growth rates. However, such habitats are few and far between, necessitating long and demanding migratory flights and often high energy expenditures while in residence (e.g., to deal with cold temperatures) (Piersma 1997, p. 623). Increased adult survival afforded by inhabiting areas of low parasite loads may offset the energetic and other costs of breeding in the climatically marginal, but parasite-low, Arctic (USFWS 2003, p. 22). Piersma's (1997) parasite hypothesis predicts that red knots should evolve migrations to low-parasite marine wintering sites to reduce the fitness consequences of high ectoparasite loads in tropical Brazil, but there is likely a tradeoff with increased mortality for long-distance migration to cold-temperate Tierra del Fuego (D'Amico *et al.* 2008, p. 193).

Species adapted to parasite-poor habitats may be particularly susceptible to parasites and pathogens (USFWS 2003, p. 22; Piersma 1997, p. 623). For example, captive *Calidris canutus* are susceptible to common avian pathogens (e.g., the avian pox virus, bacterial infections, feather lice), and reconstructing a marine environment (i.e., flushing the cages with seawater) helps to reduce at least the external signs of infections (Piersma 1997, pp. 624–625).

In summary, three localized red knot die-off events have been attributed to parasites, but these kinds of parasites (sporozoans, hookworms) have not been documented elsewhere or implicated in further red knot mortality. Blood parasites have caused red knot deaths, but blood parasite infections were not detected by testing that took place across the knot's geographic range in the 2000s. In contrast, flatworm infection is widespread in Argentina, and bird lice infection is widespread in tropical and temperate portions of the red knot's range. However, impacts of these infections on red knot health or fitness have not been documented. Red knots may be adapted to parasite-poor habitats, and may, therefore, be particularly susceptible to parasites and pathogens. However, we have no evidence that parasites have impacted red knot populations beyond causing normal, background levels of mortality, and we have no indications that parasite infection rates or fitness impacts are likely to increase. Therefore, we conclude parasites are not a threat to the red knot.

Disease—Viruses

Type A influenza viruses, also called avian influenza (AI), are categorized by two types of glycoproteins on their surface, abbreviated HA and NA (or H and N when given in various combinations to identify a unique type of AI virus). The AI viruses are also classified as high or low pathogenicity

(HPAI and LPAI). The term HPAI (high pathogenicity avian influenza) has a specific meaning relating to the ability of the virus to cause disease in experimentally inoculated chickens, and does not necessarily reflect the capacity of these viruses to produce disease in other species (Food and Agriculture Organization of the United Nations (FAO) 2013). However, it is these more virulent (highly harmful or infective) HPAI viruses that cause outbreaks of sickness and death in humans and other species of mammals and birds (FAO 2013; Krauss *et al.* 2010, p. 3373). Some LPAI types can mutate into HPAI forms (FAO 2013).

Anseriformes (swans, geese, and ducks) and Charadriiformes (gulls and shorebirds) are the natural hosts of LPAI (FAO 2013; Maxted *et al.* 2012, p. 322; Krauss *et al.* 2010, p. 3373; Olsen *et al.* 2006, p. 384). All 16 HA and 9 NA subtypes discovered to date have been detected in various combinations in wild aquatic birds, mainly LP forms. In general, LPAI viruses do not have significant health effects on wild birds, typically causing only a short-lived subclinical intestinal infection (FAO 2013; Krauss *et al.* 2010, p. 3373; Olsen *et al.* 2006, p. 384). However, HPAI can also occur in wild birds. One form of HPAI (H5N1) has caused mortality in more than 60 wild bird species, with population-level impacts in a few of those species. Although numerous wild birds have become infected with H5N1, debate remains whether wild birds play a role in the geographic spread of the disease (Olsen *et al.* 2006, pp. 387–388).

Since 1985, AI surveillance has been conducted annually from mid-May to early June in shorebirds and gulls in Delaware Bay. Influenza viruses (LP forms) are consistently isolated from shorebirds (i.e., the shorebirds were found to be carrying AI viruses) in Delaware Bay at an overall rate (5.2 percent) that is about 17 times higher than the combined rate of isolation at all other surveillance sites worldwide (0.3 percent) (Krauss *et al.* 2010, p. 3373). The isolation rate was even higher, 6.3 percent, from 2003 to 2008. Across global studies to date, AI viruses were rarely isolated from shorebirds except at two locations, Delaware Bay and a site in Australia (Krauss *et al.* 2010, p. 3375). The convergence of host factors and environmental factors at Delaware Bay results in a unique ecological ''hot spot'' for AI viruses in shorebirds (Krauss *et al.* 2010, p. 3373). Among the Delaware Bay shorebird species, ruddy turnstones (*Arenaria interpres*) have the highest infection rates by far (Maxted *et al.* 2012, p. 323). Although overall AI rates in Delaware Bay shorebirds are very high, red knots are rarely infected (L. Niles and D. Stallknecht pers. comm. January 25, 2013; Maxted *et al.* 2012, p. 322). Declining antibody prevalence in red knots over the stopover period suggests that their exposure to AI viruses generally occurs prior to arrival at Delaware Bay, with limited infection taking place at this site (Maxted *et al.* 2012, p. 322).

In wild red knots in Delaware Bay, AI infection rates are low, and only LP forms have been detected (Maxted *et al.* 2012, pp. 322–323). There is no evidence that the LPAI documented in wild red knots causes any harm to the health of these birds (L. Niles and D. Stallknecht pers. comm. January 25, 2013). However, susceptibility of *Calidris canutus* to HP forms of influenza has been shown in captivity. Five of 26 *C. canutus islandica* experimentally infected with an HPAI (H5N1) developed neurological disease or died during an experiment from 2007 to 2009 (Reperant *et al.* 2011, pp. 1, 4, 8). The appearance of clinical signs in these birds was sudden and the affected birds did not behave significantly differently on the preceding days than birds that remained sub-clinically infected (Reperant *et al.* 2011, p. 4). See Cumulative Effects, below, for discussion of an unlikely but potentially high-impact interaction among AI, environmental contaminants, and climate change.

Newcastle disease is a contagious bird disease (an avian paramyxovirus), and one of the most important poultry diseases worldwide. While people in direct contact with infected birds can get swelling and reddening of tissues around the eyes (conjunctivitis), no human cases of Newcastle disease have occurred from eating poultry products (Iowa State University 2008, entire). Although Newcastle disease is the most economically important, other types of avian paramyxovirus have been isolated from domestic poultry, where they occasionally cause respiratory and reproductive disease (Coffee *et al.* 2010, p. 481). No information is available regarding health effects of avian paramyxovirus in shorebirds.

From 2000 to 2005, Coffee *et al.* (2010, p. 481) tested 9,128 shorebirds and gulls of 33 species captured in 10 U.S. States and 3 countries in the Caribbean and South America for various types of avian paramyxovirus, including Newcastle disease virus. Avian paramyxoviruses were isolated from 60 (0.7 percent) samples, with 58 of the isolates coming from shorebirds (only 2 from gulls). All of the 58 positive shorebirds were sampled at Delaware Bay, and 45 of these isolates came from ruddy turnstones. The higher prevalence of avian paramyxovirus in ruddy turnstones mirrors the results observed for avian influenza viruses in shorebirds and may suggest similar modes of transmission (Coffee *et al.* 2010, p. 481). Of the birds sampled, 1,723 were red knots from Delaware Bay and 921 were red knots from other locations (Coffee *et al.* 2010, p. 483). Of these 2,644 red knots, only 7 tested positive (0.4 percent), and all 7 were captured in Delaware Bay (Coffee *et al.* 2010, p. 484). Like avian influenza virus, avian paramyxovirus infections in red knots may be site dependent, and at Delaware Bay these viruses may be locally amplified (Coffee *et al.* 2010, p. 486).

Since 2002, migratory birds in Brazil have been tested for various viruses including West Nile and Newcastle. As of 2007, AI type H2 had been found in one red knot, equine encephalitis virus in another, and Mayaro virus in seven knots (Niles *et al.* 2008, p. 101). Evidence does not indicate that West Nile virus will affect red knot health, and shorebirds are generally not regarded as important avian hosts in West Nile virus epidemiology (D. Stallknecht pers. comm. January 25, 2013). In 2005 and 2006, 156 red knots were sampled at 2 sites in Argentina (Río Grande and San Antonio Oeste) and tested for Newcastle disease virus, AI virus, and antibodies to the St. Louis encephalitis virus; all test results were negative (D'Amico *et al.* 2007, p. 794). One red knot was among 165 shorebirds of 11 species from southern Patagonia, Argentina, that were tested for all AI subtypes in 2004 and 2005; no AI was detected (Escudero *et al.* 2008, pp. 494–495).

For the most prevalent viruses found in shorebirds within the red knot's geographic range, infection rates in red knots are low, and health effects are minimal. We conclude that viral infections documented to date do not cause significant mortality and are not currently a threat to the red knot. However, see Cumulative Effects, below, regarding an unlikely but potentially high-impact, synergistic effect among avian influenza, environmental contaminants, and climate change in Delaware Bay.

Factor C—Predation

Predation—Nonbreeding Areas

In wintering and migration areas, the most common predators of red knots are peregrine falcons (*Falco peregrinus*), harriers (*Circus* spp.), accipiters (Family Accipitridae), merlins (*F. columbarius*), shorteared owls (*Asio flammeus*), and

greater black-backed gulls (*Larus marinus*) (Niles *et al.* 2008, p. 28). In addition to greater black-backed gulls, other large gulls (e.g. herring gulls (*Larus argentatus*)) are anecdotally known to prey on shorebirds (Breese 2010, p. 3). Predation by a great horned owl (*Bubo virginianus*) has been documented in Florida (A. Schwarzer pers. comm. June 17, 2013). Nearly all documented predation of wintering red knots in Florida has been by avian, not terrestrial, predators (A. Schwarzer pers. comm. June 17, 2013). However in migration areas like Delaware Bay, terrestrial predators such as red foxes (*Vulpes vulpes*) and feral cats (*Felis catus*) may be a threat to red knots by causing disturbance, but direct mortality from these predators may be low (Niles *et al.* 2008, p. 101).

Ellis *et al.* (2002, pp. 316–317) summarized the documented prey species taken by peregrine falcons in Patagonia and Tierra del Fuego, based on early 1980s field surveys. Shorebirds represented only 8 of 55 reported prey species (about 15 percent), but accounted for 44 of 138 individual birds preyed on (about 32 percent) (Ellis *et al.* 2002, pp. 316–317), suggesting that shorebirds may be a favored prey type. Red knots were not reported among the prey species, but these authors considered their list incomplete and believed many more prey species would be identified from further sampling (Ellis *et al.* 2002, pp. 317–318).

Peregrine falcons have been seen frequently along beaches in Texas, where dunes would provide good cover for peregrines preying on red knots foraging along the narrow beachfront (Niles *et al.* 2009, p. 2). Peregrines are known to hunt shorebirds in the red knot's Virginia and Delaware Bay stopover areas (Niles 2010a; Niles *et al.* 2008, p. 106), and peregrine predation on red knots has been observed in Florida (A. Schwarzer pers. comm. June 17, 2013).

Raptor predation has been shown to be an important mortality factor for shorebirds at several sites (Piersma *et al.* 1993, p. 349). However, Niles *et al.* (2008, p. 28) concluded that increased raptor populations have not been shown to affect the size of shorebird populations. Based on studies of other *Calidris canutus* subspecies in the Dutch Wadden Sea, Piersma *et al.* (1993, p. 349) concluded that the chance for an individual to be attacked and captured is small, as long as the birds remain in the open and in large flocks so that approaching raptors are likely to be detected. Although direct mortality from predation is generally considered relatively low in nonbreeding areas, predators also impact red knots by affecting habitat use and migration strategies (Niles *et al.* 2008, p. 101; Stillman *et al.* 2005, p. 215) and by causing disturbance, thereby potentially affecting red knots' rates of feeding and weight gain.

Red knots' selection of high-tide roosting areas on the coast appears to be strongly influenced by raptor predation, something well demonstrated in other shorebirds (Niles *et al.* 2008, p. 28). Red knots require roosting habitats away from vegetation and structures that could harbor predators (Niles *et al.* 2008, p. 63). Red knots' usage of foraging habitat can also be affected by the presence of predators, possibly affecting the birds' ability to prepare for their final flights to the arctic breeding grounds (Watts 2009b) (e.g., if the knots are pushed out of those areas with the highest prey density or quality). In 2010, horseshoe crab egg densities were very high in Mispillion Harbor, Delaware, but red knot use was low because peregrine falcons were regularly hunting shorebirds in that area (Niles 2010a). Growing numbers of peregrine falcons on the Delaware Bay and New Jersey's Atlantic coasts are decreasing the suitability of a number of important shorebird areas (Niles 2010a). Analyzing survey data from the Virginia stopover area, Watts (2009b) found the density of red knots far (greater than 3.7 mi (6 km)) from peregrine nests was nearly eight times higher than close (0 to 1.9 mi (0 to 3 km)) to peregrine nests. In addition, red knot density in Virginia was significantly higher close to peregrine nests during those years when peregrine territories were not active compared to years when they were (Watts 2009b). Similar results were found for other *Calidris canutus* subspecies in the Dutch Wadden Sea, where the spatial distribution of *C. canutus* was best explained by both food availability and avoidance of predators (Piersma *et al.* 1993, p. 331).

In addition to affecting habitat use, predation has been shown to affect migration strategies in Arctic-breeding shorebirds (Lank *et al.* 2003, p. 303). Studying two other *Calidris* species, Hope *et al.* (2011, p. 522) found that both adults and juveniles shortened their stopover durations during the period of increased peregrine falcon abundance. Butler *et al.* (2003, p. 132) demonstrated how recovering raptor populations in North America appear to have led to changes in the migratory strategies of western sandpipers (*C. mauri*), including lower numbers of shorebirds, reduced stopover length, and lower body mass at the more predation-prone sites (as cited in Niles *et al.* 2008, p. 101).

Red knots can also be affected by peregrines through repeated disturbance. Red knots in Virginia are frequently disturbed by peregrine falcons (Niles *et al.* 2008, p. 106). Peregrines flying near foraging shorebirds at Delaware Bay are known to cause severe disturbance, prompting the shorebirds to fly in evasive maneuvers and not return for prolonged time periods. It is not believed that disturbance by peregrines in Delaware Bay changed significantly over the time period that red knots declined (Breese 2010, pp. 3–4).

The vulnerability of red knots, and their reactivity to perceived predation danger, may be related to their field of vision. Studying other subspecies, Martin and Piersma (2009, p. 437) found that *Calidris canutus* did not show comprehensive panoramic vision as found in some other tactile-feeding shorebirds, but have a binocular field surrounding the bill and a substantial blind area behind the head. This visual system may be a tradeoff for switching to more visually guided foraging (i.e., insects) on the breeding grounds. However, this forward-focused visual field leaves *C. canutus* vulnerable to aerial predation, especially when using tactile foraging in nonbreeding locations where predation by falcons is an important selection factor (Martin and Piersma 2009, p. 437).

In the United States, most peregrine falcons in coastal areas rely on artificial nest sites (Niles *et al.* 2008, p. 101). In some areas, land managers have begun to remove peregrine nesting platforms in strategic locations where they are having the greatest impact on shorebirds (Niles 2010a; Watts 2009b; Kalasz 2008, p. 39).

Peregrine falcon populations in the United States have increased substantially since the mid-1970s, when the bird was extirpated in the east and only 324 known nesting pairs remained in total (USFWS 2012b). Today there are from 2,000 to 3,000 breeding pairs of peregrine falcons in North America (USFWS 2012b). Other raptor populations also increased over this period due to stricter pesticide regulations and conservation efforts (Butler *et al.* 2003, p. 130). Such measures reduced the prevalence of DDT (dichloro-diphenyl-trichloroethane) in the environment, which had caused egg shell thinning and, therefore, poor nest productivity in peregrine falcons (USFWS 2012b). We expect that peregrine and other raptor populations will continue to grow over coming decades, but at a slower rate. We

also expect that land managers will continue balancing the conservation needs of both raptors and shorebirds, so that the predation pressures in key red knot wintering and stopover areas are likely to remain the same or decrease slightly.

We conclude that, outside of the breeding grounds (which are discussed below), predation is not directly impacting red knot populations despite some direct mortality. At key stopover sites, however, localized predation pressures are likely to exacerbate other threats to red knot populations, such as habitat loss (Factor A), food shortages (Factor E), and asynchronies between the birds' stopover period and the occurrence of favorable food and weather conditions (Factor E). Predation pressures worsen these threats by pushing red knots out of otherwise suitable foraging and roosting habitats, causing disturbance, and possibly causing changes to stopover duration or other aspects of the migration strategy (see Cumulative Effects below).

Predation—Breeding Areas

Although little information is available from the breeding grounds, the long-tailed jaeger (*Stercorarius longicaudus*) is prominently mentioned as a predator of red knot chicks in most accounts. Other avian predators include parasitic jaeger (*S. parasiticus*), pomarine jaeger (*S. pomarinus*), herring gull, glaucous gull (*Larus hyperboreus*), gyrfalcon (*Falcon rusticolus*), peregrine falcon, and snowy owl (*Bubo scandiacus*). Mammalian predators include arctic fox (*Alopex lagopus*) and sometimes arctic wolves (*Canis lupus arctos*) (Niles *et al.* 2008, p. 28; COSEWIC 2007, p. 19). Predation pressure on Arctic-nesting shorebird clutches varies widely regionally, interannually, and even within each nesting season, with nest losses to predators ranging from close to 0 percent to near 100 percent (Meltofte *et al.* 2007, p. 20), depending on ecological factors.

Abundance of arctic rodents, such as lemmings, is often cyclical, although less so in North America than in Eurasia. In the Arctic, 3- to 4-year lemming cycles give rise to similar cycles in the predation of shorebird nests. When lemmings are abundant, predators concentrate on the lemmings, and shorebirds breed successfully. When lemmings are in short supply, predators switch to shorebird eggs and chicks (Niles *et al.* 2008, p. 101; COSEWIC 2007, p. 19; Meltofte *et al.* 2007, p. 21; USFWS 2003, p. 23; Blomqvist *et al.* 2002, p. 152; Summers and Underhill 1987, p. 169). Blomqvist *et al.* (2002, p. 146) correlated predation pressure on *Calidris canutus canutus* on Siberian breeding grounds with numbers of juveniles in nonbreeding areas, following a 3-year cycle. These authors concluded that the reproductive output of *C.c. canutus* was limited by predation and that chick production was high when predation pressure was reduced by arctic foxes preying primarily on lemmings (Fraser *et al.* 2013, p. 13; Blomqvist *et al.* 2002, p. 146).

In addition to affecting reproductive output, these cyclic predation pressures have been shown to influence shorebird nesting chronology and distribution. Studying 12 shorebird species, including red knot, over 11 years at 4 sites in the eastern Canadian Arctic, Smith *et al.* (2010a, pp. 292; 300) found that both snow conditions and predator abundance have significant effects on the chronology of breeding. Higher predator abundance resulted in earlier nesting than would be predicted by snow cover alone (Smith *et al.* 2010a, p. 292). Based on the adaptations of various species to deal with predators, Larson (1960, pp. 300–303) concluded that the distribution and abundance of *Calidris canutus* and other Arctic-breeding shorebirds were strongly influenced by arctic fox and rodent cycles, such that birds were in low numbers or absent in areas without lemmings because foxes preyed predominately on birds in those areas (as cited in Fraser *et al.* 2013, p. 14).

Years with few lemmings and many predators can be extremely unproductive for red knots, although predator cycles are usually not uniform across all breeding areas so that in most years there is generally some production of young (Niles *et al.* 2008, p. 63). Unsuccessful breeding seasons contributed to at least some of the observed reductions in the red knot population in the 2000s. However, rodent-predator cycles have always affected the productivity of Arctic-breeding shorebirds and have generally caused only minor year-to-year changes in otherwise stable populations (Niles *et al.* 2008, pp. 64, 101).

In northern Europe, lemming cycles diminished after the early 1990s but returned in the early 2000s (Fraser *et al.* 2013, p. 16; Brommer *et al.* 2010, p. 577; Kausrud *et al.* 2008, p. 93). Changes in temperature and humidity seemed to markedly affect rodent dynamics by altering conditions in the spaces below the snow where lemming prefer to live. These observations lead Kausrud *et al.* (2008, p. 93) to conclude that the pattern of less regular rodent peaks, and corresponding ecosystem changes mediated by predators, seem likely to prevail over a growing geographic area under projected climate change. However, Brommer *et al.* (2010, p. 577) found that lemming cycles in Finland returned after about 5 years despite ongoing and rapid climate change, suggesting that climate change may not explain why the cycles were interrupted.

At two sites in northeast Greenland, lemming populations collapsed around 2000, both in terms of actual densities and periodicity (Schmidt *et al.* 2012, p. 4419). The observed change in Greenland lemming dynamics dramatically affected the predator guild, with the most pronounced response in two lemming-specialist predator species (Schmidt *et al.* 2012, p. 4421). Observed differences in predator responses between the two Greenland sites could arise from site-specific differences in lemming dynamics, interactions among predators, or subsidies from other resources (Schmidt *et al.* 2012, p. 4417) (e.g., shifting to other prey species, which could have implications for shorebirds). Ultimately, changing predator populations may cause cascading impacts on the entire tundra food web, with unknown consequences (Schmidt *et al.* 2012, p. 4421). Unlike the 1990s lemming cycle disruption in Europe, Schmidt *et al.* (2012, entire) did not report any signs of recovery of the Greenland lemming cycles, based on data through 2010.

Disruption of rodent-predator cycles may constitute a large-scale impact on predation pressure on arctic shorebird nests (Meltofte *et al.* 2007, p. 22). In the Siberian Arctic, lemmings are keystone species, and any climate effects on their abundance or population dynamics may indirectly affect shorebird populations through predation. The role of lemmings in the eastern Canadian Arctic is unclear, but large annual fluctuations in lemming or other rodent populations suggest that similar dynamics operate there (Meltofte *et al.* 2007, p. 34). Fraser *et al.* (2013, p. 13) investigated the relationship between the rodent cycle in Arctic Canada and numbers of red knots migrating through the United States. Shooting records from Cape Cod in the 1800s and red knot counts on Delaware Bay from 1986 to 1998 cycled with 4-year periods. Annual peaks in numbers of red knots stopping in the Delaware Bay from 1986 to 1998 occurred 2 years after arctic rodent peaks, with a correlation more often than expected at random. These results suggest that red knot reproductive output was linked to the rodent cycle before the red knot population decline (i.e., 1998 and earlier). We have no evidence that such

a link existed after 1998. These findings are consistent with a hypothesis that an interruption of the rodent cycle in red knot breeding habitat could have been a driver in the red knot decline observed in the 2000s. However, additional studies would be needed to support this hypothesis (Fraser *et al.* 2013, p. 13).

McKinnon *et al.* (2010, p. 326) used artificial nests to measure predation risk along a 2,083-mi (3,350-km) south-north gradient in the Canadian Arctic and found that nest predation risk declined more than twofold along the latitudinal gradient. The study area included the entire latitudinal range of known and modeled red knot breeding habitat, extending both farther south (into the sub-Arctic) and farther north (to encompass the breeding range of *Calidris canutus islandica*). Nest predation risk was negatively correlated with latitude. For an increase in 1° of latitude, the relative risk of predation declined by 3.6 percent, equating to a 65 percent decrease in predation risk over the 29° latitudinal transect. The results provide evidence that birds migrating farther north may acquire reproductive benefits in the form of lower nest predation risk (McKinnon *et al.* 2010, p. 326). Predation pressure on red knots could increase if, due to climate change, a new suite of predators expands their ranges northward from the sub-Arctic into the knot's breeding range.

We conclude that cyclic predation in the Arctic results in years with extremely low reproductive output but does not threaten the red knot. The cyclical nature of this predation on shorebirds is a situation that has probably occurred over many centuries, and under historic conditions likely had no lasting impact on red knot populations. Where and when rodent-predator cycles are operating, we expect red knot reproductive success will also be cyclic. However, these cycles are being interrupted for reasons that are not yet fully clear. The geographic extent and duration of future interruptions to the cycles cannot be forecast but may intensify as the arctic climate changes. Disruptions in the rodent-predator cycle pose a substantial threat to red knot populations, as they may result in prolonged periods of very low reproductive output. Superimposed on these potential cycle disruptions are warming temperatures and changing vegetative conditions in the Arctic, which are likely to bring about additional changes in the predation pressures faced by red knots on the breeding grounds; we cannot forecast how such ecosystem changes are likely to unfold.

Factor C—Conservation Efforts

We are unaware of any conservation efforts to reduce disease in red knots. We are also unaware of any conservation efforts to reduce predation of the red knot in its breeding range. As discussed above, land managers in some areas of the United States have begun to remove peregrine nesting platforms in key locations where they are having the greatest impact on shorebirds.

Factor C—Summary

Red knots may be adapted to parasite-poor habitats and may, therefore, be susceptible to parasites when migrating or wintering in high-parasite regions. However, we have no evidence that parasites have affected red knot populations beyond causing normal, background levels of mortality, and we have no indications that parasite infection rates or red knot fitness impacts are likely to increase. Therefore, we conclude that parasites are not a threat to the red knot. For the most prevalent viruses found in shorebirds within the red knot's geographic range, infection rates in red knots are low, and health effects are minimal or have not been documented. Therefore, we conclude that viral infections do not cause significant mortality and are not a threat to the red knot. However, see Cumulative Effects (below) regarding an unlikely but potentially high-impact, synergistic effect among avian influenza, environmental contaminants, and climate change in Delaware Bay.

Outside of the breeding grounds, predation is not affecting red knot populations despite some direct mortality. At key stopover sites, however, localized predation pressures are likely to exacerbate other threats to red knot populations by pushing red knots out of otherwise suitable foraging and roosting habitats, causing disturbance, and possibly causing changes to stopover duration or other aspects of the migration strategy. We expect the direct and indirect effects of predators to continue at the same level or decrease slightly over the next few decades.

Within the breeding range, normal 3- to 4-year cycles of high predation, mediated by rodent cycles, result in years with extremely low reproductive output but do not threaten the survival of the red knot at the subspecies level. However, these rodent-predator cycles are being interrupted for reasons that are not yet fully clear but may be linked to climate change. Disruptions in the rodent-predator cycle pose a substantial threat to the red knot, as they may result in prolonged periods of very low reproductive output. Such disruptions have already occurred and may increase due to climate change. The substantial impacts of elevated egg and chick predation on shorebird reproduction are well known, although the red knot's capacity to adapt to long-term changes in predation pressure is unknown. The threat of persistent increases in predation in the Arctic may already be having subspecies-level effects and is anticipated to increase into the future. Further, warming temperatures and changing vegetative conditions in the Arctic are likely to bring additional changes in the predation pressures faced by red knots, but we cannot forecast how such ecosystem changes are likely to unfold.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

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

A comprehensive discussion of international, Federal, State, and local laws, regulations, policies, and treaties that apply to the red knot is available as a supplemental document (''Factor D: The Inadequacy of Existing Regulatory Mechanisms'') on the Internet at *http://www.regulations.gov* (Docket No. FWS–R5–ES–2013–0097; see **ADDRESSES** section for further access instructions). We provide a brief summary below.

In Canada, the Species at Risk Act provides protections for the red knot and its habitat, both on and off Federal lands. The red knot is afforded additional protections under the Migratory Birds Convention Act and by provincial law in four of Canada's Provinces. In other areas outside of the United States' jurisdiction, red knots are legally protected from direct take and hunting in several Caribbean and Latin

American countries, but we lack information regarding the implementation or effectiveness of these measures (see Factor B—Hunting). For many other countries, red knot hunting is unregulated, or we lack sufficient information to determine if red knot hunting is legal. We also lack information for countries outside the United States regarding the protection or management of red knot habitat, and regarding the regulation of other activities that threaten the red knot such as development (see Factor A—International Coastal Development) and disturbance, oil spills, environmental contaminants, and wind energy development (see Factor E).

Within the United States, the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*) (MBTA) and state wildlife laws protect the red knot from direct take resulting from scientific study and hunting (see Factor B). The MBTA is the only Federal law in the United States currently providing specific protection for the red knot due to its status as a migratory bird. The MBTA prohibits the following actions, unless permitted by Federal regulation: To ''pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird . . . or any part, nest, or egg of any such bird.'' Through issuance of Migratory Bird Scientific Collecting permits, the Service ensures that best practices are implemented for the careful capture and handling of red knots during banding operations and other research activities (see Factor B—Scientific Study). Birds in the Family Scolopacidae, including the red knot, are listed as a game species under international treaties with Canada and Mexico. The MBTA, which implements these treaties, grants the Service authority to establish hunting seasons for any listed game species. However, the Service has determined that hunting is appropriate only for those species for which there is a long tradition of hunting, and for which hunting is consistent with their population status and their long-term conservation. The Service would not consider legalizing the hunting of shorebird species, such as the red knot, whose populations were previously devastated by market hunting (USFWS 2012c) (see Factor B—Hunting).

There are no provisions in the MBTA that prevent habitat destruction unless the activity causes direct mortality or the destruction of active nests, which would not apply since red knots do not breed in the United States. The MBTA does not address threats to the red knot from further population declines associated with habitat loss, insufficient food resources, climate change, or the other threats discussed under Factors A, B, C, and E. However, the Sikes Act (16 U.S.C. 670), covering military bases, the National Park Service Organic Act of 1916, as amended (NPSOA), covering national parks and seashores, and the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA), covering national wildlife refuges, do provide protection for the red knot from habitat loss and inappropriate management on Federal lands.

Among coastal States from Maine to Texas, all except Alabama have enacted some kind of endangered species legislation; however, the red knot is listed only in New Jersey (as endangered) and Georgia (as rare, a category of protected species). The New Jersey Endangered and Non Game Species Conservation Act of 1973 (N.J.S.A. 23:2A *et seq.*) prohibits taking, possessing, transporting, exporting, processing, selling, or shipping listed species. ''Take'' is defined in New Jersey as harassing, hunting, capturing, or killing, or attempting to do so. As a State-listed species, the red knot is also afforded habitat protection under the New Jersey Coastal Zone Rules (N.J.A.C. 7:7E). Under the Georgia Nongame and Endangered Species Conservation Act (Code 1976 § 50–15–10–90), red knots cannot be captured, killed, or sold, and their habitat is protected on public lands; however, Georgia law specifically states that rules and regulations related to the protection of State-protected species shall not affect rights in private property.

As discussed under Factors A and E, shoreline stabilization has significant impacts on red knot habitats, and can also impact knots through disturbance and via impacts on prey resources. Shoreline stabilization is often federally funded (e.g., through the Water Resources Development Acts) or authorized (e.g., under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and sections 9 and 10 of the Rivers and Harbors Act (33 U.S.C. 403 *et seq.*)). Federal funding or authorization for a project triggers several environmental requirements that may afford some protections to red knots or their habitats, but several of these are nonregulatory in nature (e.g., the National Environmental Policy Act 42 U.S.C. 4321 *et seq.* (1969) (NEPA); Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds)). One regulatory measure is the Coastal Barrier Resources Act (Pub. L. 97–348) (96 Stat. 1653; 16 U.S.C. 3501 *et seq.*) (CBRA), as amended. The CBRA designated relatively undeveloped coastal barriers along the Atlantic and Gulf coasts as part of the John H. Chafee Coastal Barrier Resources System and made these areas ineligible for most new Federal expenditures and financial assistance, including Federal flood insurance that can promote development. The goal of these laws is to remove Federal incentives for the development of coastal barriers (e.g., barrier islands), because such development can lead to loss of natural resources, threats to human life and property, and imprudent expenditure of tax dollars.

The Coastal Zone Management Act of 1972 (Pub. L. 92–583) (86 Stat. 1280; 16 U.S.C. 1451–1464) (CZMA) provides Federal funding to implement the States' federally approved Coastal Zone Management Plans, which guide and regulate development and other activities within the designated coastal zone of each State. All eligible States in the red knot's U.S. range (including the Great Lakes) have approved Coastal Zone Management Plans (National Oceanic and Atmospheric Administration (NOAA) 2012c, p. 2). In those States with approved plans, the CZMA requires Federal action agencies to ensure that the activities they fund or authorize are consistent, to the maximum extent practicable, with the enforceable policies of that State's federally approved coastal management program; this provision of CZMA is known as Federal consistency (NOAA 2012c, p. 2). Thirteen of 18 Atlantic or Gulf coast States (72 percent) range allow for new hard structures along the oceanfront beach, and 16 of these 18 States allow armoring of bays and sounds (Rice 2012a, p. 7; Titus 2000, p. 743). As of 2000, every State from Maine to Texas allowed oceanfront beach nourishment, although beach nourishment of bays and sounds was permitted in only 7 of these 18 States (Titus 2000, p. 743). Due to the CZMA's Federal consistency provision, Federal agencies also generally follow each State's policies in determining if coastal projects may be federally funded or authorized.

Other threats to habitat and food supplies and from disturbance are partially, but not fully, abated by various State and Federal regulations. First, State regulations provide varying levels of protection from impacts

associated with beach grooming (i.e., mechanical raking or cleaning), but we do not have comprehensive information for each State. Above the high tide line, beach grooming activities are typically not regulated by the USACE, and thus fall under State and local jurisdictions. In those jurisdictions for which information is available, beach grooming is generally permitted in red knot habitat, including while the birds are present. Second, several Federal and State regulatory and nonregulatory measures are in effect to stem the introductions and effects of invasive and harmful species (e.g., Executive Order 13112; the Plant Protection Act of 2000 (Pub. L. 106–224); the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646); the National Invasive Species Act of 1996 (Pub. L. 104–332); the U.S. Coast Guard's (USCG) ballast water regulations (77 FR 17254); the Lacey Act (18 U.S.C. 42, 50 CFR part 16); the Clean Water Act; and the Harmful Algal Bloom and Hypoxia Amendments Act of 2004 (Pub. L. 108–456)), but collectively these measures do not provide complete protection to the red knot from impacts to its habitats or food supplies resulting from beach or marine invaders or the spread of harmful algal species. Third, although threats to the horseshoe crab egg resource remain (see Factor E—Reduced Food Supplies), the current regulatory management of the horseshoe crab fishery (e.g., the Adaptive Resource Management (ARM) framework adopted by the ASMFC, a governing body established by the Atlantic Coastal Fisheries Cooperative Management Act of 1993) is adequately addressing threats to the knot's Delaware Bay food supply from direct harvest of horseshoe crabs. Fourth, although we lack information regarding the overall effect of recreation management policies on the red knot, we are aware of a few locations in which beaches are closed, regulated, or monitored to protect nonbreeding shorebirds through the MBTA, Sikes Act, NPSOA, NWRSIA, and State or local laws and policies. And fifth, relatively strong Federal laws likely reduce risks to red knots from oil spills (e.g., the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*)) and pesticides (e.g., the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*)). The OPA requires contingency planning by Federal, state, and local governments and industry groups, and includes penalties for regulatory noncompliance. Under the OPA, the EPA regulates above ground storage facilities and the USCG regulates oil tankers, which have been transitioning to double hulls since 1992 under international agreements. In addition, oil and gas operations on the Outer Continental Shelf (OCS) are regulated (50 CFR parts 203–291) by the Bureau of Safety and Environmental Enforcement (BSEE) within the Department of the Interior (DOI). Despite the relatively robust oil spill and pesticide regulations in place, these laws have not been sufficient to prevent documented shorebird mortalities and other impacts in recent decades.

In addition to above-mentioned regulatory mechanisms addressing threats to habitat, food resources, and from disturbance, there are Federal laws and policies to reduce the red knot's collision risks from new terrestrial and offshore wind turbine development (e.g., construction and operation). The MBTA applies to all Federal and non-Federal activities that result in the ''take'' of migratory birds. To assist wind developers comply with MBTA, the Service's voluntary Land-Based Wind Energy Guidelines provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development (USFWS 2012d, p. vi). In addition to the MBTA, other Federal regulatory mechanisms and nonregulatory policies (e.g., NEPA, Executive Order 13186, NSPOA, NWRSIA, and section 10 of the Endangered Species Act) may apply to terrestrial wind energy development, depending on the nature of the Federal nexus, if any, in turbine construction and operation. Regarding offshore wind energy development, section 388 of the Energy Policy Act of 2005 granted the DOI discretionary authority to issue leases, easements, or rights-of-way for activities on the OSC for wind and other types of renewable energy development. Under NEPA, DOI has prepared a Programmatic Environmental Impact Statement setting forth policies and best management practices, and has promulgated regulations and guidelines (Department of Energy (DOE) and Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) 2011, p. iii). In addition to these Federal provisions, some states have policies in place to address risks to red knots from wind energy development (see supplemental document—Factor D). However, as described below in Factor E, despite these state and Federal laws, policies, and voluntary guidelines, we expect some level of red knot mortality to occur from the buildout of the Nation's wind energy infrastructure.

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

In this section, we present and assess the best available information regarding a range of other ongoing and emerging threats to the red knot, including reduced food availability, asynchronies (''mismatches'') between the timing of the red knot's annual cycle and the windows of optimal food and weather conditions on which it depends, human disturbance, oil spills, environmental contaminants, and wind energy development.

Factor E—Reduced Food Availability

Declining food resources can have major implications for the survival and reproduction of long-distance migrant shorebirds (International Wader Study Group 2003, p. 10). The life history of long-distance, long-hop migrant shorebirds indicates that the availability of abundant food resources at temperate stopovers is critical for completing their annual cycle (USFWS 2003, p. 4). In other *Calidris canutus* subspecies, commercial shellfish harvests have been linked to local decreases in recruitment and possibly emigration in a wintering area in England (Atkinson *et al.* 2003a, p. 127); increased gizzard sizes (possibly to grind lower quality, i.e., thicker shelled, prey) and decreases in local survival in a wintering area in the Dutch Wadden Sea (van Gils *et al.* 2006, p. 2399); and prey switching and reduced red knot use in a wintering and stopover area in the Dutch Wadden Sea (Piersma *et al.* 1993, pp. 343, 354). Harvest activities have also been shown to impact prey availability for other *Calidris* species—foraging efficiency of semipalmated sandpipers decreased nearly 70 percent after 1 year of baitworm harvesting in the Bay of Fundy, concurrent with habitat changes and a 39 percent decrease in the sandpiper's preferred amphipod prey (Shepherd and Boates 1999, p. 347).

Commercial harvest of horseshoe crabs has been implicated as a causal factor in the decline of the rufa red knot, by decreasing the availability of horseshoe crab eggs in the Delaware Bay stopover (Niles *et al.* 2008, pp. 1–2). Notwithstanding the importance of the horseshoe crab and Delaware Bay, other lines of evidence suggest that the rufa red knot also faces threats to its food resources throughout its range. The following discussion addresses known or likely threats to the abundance or quality of red knot prey. Potential food shortages caused by asynchronies (''mismatches'') in the red knot's annual cycle are discussed in the next section.

Also see Factor A—Agriculture and Aquaculture, above, regarding clam farming practices in Canada that impact red knot prey resources by modifying suitable foraging habitat via sediment sifting. Although threats to food quality and quantity are widespread, red knots in localized areas have shown some ability to switch prey when the preferred prey species became reduced (Escudero *et al.* 2012, pp. 359, 362; Musmeci *et al.* 2011, entire), suggesting some adaptive capacity to cope with this threat.

Food Availability—Ocean Acidification

During most of the year, bivalves and other mollusks are the primary prey for the red knot (see the ''Migration and Wintering Food'' section of the Rufa Red Knot Ecology and Abundance supplemental document). Mollusks in general are at risk from climate change-induced ocean acidification (Fabry *et al.* 2008, pp. 419–420). Oceans become more acidic as carbon dioxide emitted into the atmosphere dissolves in the ocean. The pH (percent hydrogen, a measure of acidity or alkalinity) level of the oceans has decreased by approximately 0.1 pH units since preindustrial times, which is equivalent to a 25 percent increase in acidity. By 2100, the pH level of the oceans is projected to decrease by an additional 0.3 to 0.4 units under the highest emissions scenarios (NRC 2010, pp. 285–286). As ocean acidification increases, the availability of calcium carbonate declines. Calcium carbonate is a key building block for the shells of many marine organisms, including bivalves and other mollusks (USEPA 2012; NRC 2010, p. 286). Vulnerability to ocean acidification has been shown in bivalve species similar to those favored by red knots, including mussels (Gaylord *et al.* 2011, p. 2586; Bibby *et al.* 2008, p. 67) and clams (Green *et al.* 2009, p. 1037). Reduced calcification rates and calcium metabolism are also expected to affect several mollusks and crustaceans that inhabit sandy beaches (Defeo *et al.* 2009, p. 8), the primary nonbreeding habitat for red knots. Relevant to Tierra del Fuego-wintering knots, bivalves have also shown vulnerability to ocean acidification in Antarctic waters, which are predicted to be particularly affected due to naturally low carbonate saturation levels in cold waters (Cummings *et al.* 2011, p. 1).

To study the effects of ocean acidification on marine invertebrates, Hale *et al.* (2011, p. 661) collected representative species, including mollusks, from the extreme low intertidal zone and exposed them in the laboratory to varying levels of pH and temperature. These authors found significant changes in community structure and lower diversity in response to reduced pH. At lower pH levels, warmer temperatures resulted in lower species abundances and diversity. The species losses responsible for these changes in community structure and diversity were not randomly distributed across the different phyla examined, with mollusks showing the greatest reduction in abundance and diversity in response to low pH and elevated temperature. This and other studies support the idea that ocean acidification-induced changes in marine biodiversity will be driven by differential vulnerability within and between different taxonomic groups. This study also illustrates the importance of considering indirect effects that occur within multispecies assemblages when attempting to predict the consequences of ocean acidification and global warming on marine communities (Hale *et al.* 2011, p. 661). With climate change, interactions between temperature and pH may cause detrimental ecological changes to red knot prey species at both wintering and migration stopover areas.

Food Availability—Temperature Changes

In addition to being sensitive to acidification, mollusks and other marine invertebrates are sensitive to temperature changes. Global average air temperature is expected to warm at least twice as much in the next century as it has over the previous century, with an expected increase of 2 to 11.5 °F (1.1 to 6.4 °C) by 2100 (USEPA 2012). Coastal waters are ''very likely'' to continue to warm by as much as 4 to 8 °F (2.2 to 4.4 °C) in this century, both in summer and winter (USGCRP 2009, p. 151). In the mid-Atlantic, changes in water temperature (and quality) are expected to have mostly indirect effects on red knots and other shorebirds, primarily through changes in the distribution and abundance of food resources (Najjar *et al.* 2000, p. 227). Changes in sea temperatures can have major effects on marine populations, as witnessed during severe events such as El Niño (an occasional abnormal warming of tropical waters in the eastern Pacific from unknown causes), when the abundance of many invertebrate species plummeted on South American beaches (Rehfisch and Crick 2003, p. 88). Although the invertebrates recovered quickly when conditions returned to normal, this short-term change in sea temperature may give an indication of likely changes under projected global warming scenarios (Rehfisch and Crick 2003, p. 88).

Asynchronies (''mismatches'') between the timing of the red knot's annual cycle and the peak abundance periods of its prey are discussed in the next section. However, repeated asynchronies can also occur between a prey species' own annual cycles and environmental conditions, leading to long-term declines of these invertebrate populations and thereby affecting the absolute quantity of red knot food supplies (in addition to the timing). For example, Philippart *et al.* (2003, p. 2171) found that rising water temperatures upset the timing of reproduction in the intertidal bivalve *Macoma balthica,* with the timing of the first vulnerable life stages thrown out of sync with respect to the most optimal environmental conditions (a phytoplankton bloom and the settlement of juvenile shrimps). These authors concluded that prolonged periods of lowered bivalve recruitment and stocks may lead to a reformulation of estuarine food webs and possibly a reduction of the resilience of the system to additional disturbances, such as shellfish harvest (Philippart *et al.* 2003, p. 2171).

Blue mussel spat is an important prey item for red knots in Virginia (Karpanty *et al.* 2012, p. 1). The southern limit of adult blue mussels has contracted from North Carolina to Delaware since 1960 due to increasing air and water temperatures (Jones *et al.* 2010, pp. 2255–2256). Larvae have continued to recruit to southern locales (including Virginia) via currents, but those recruits die early in the summer due to water and air temperatures in excess of lethal physiological limits. Failure to recolonize southern regions will occur when reproducing populations at higher latitudes are beyond dispersal distance (Jones *et al.* 2010, pp. 2255–2256). Thus, this key prey resource may soon disappear from the red knot's Virginia spring stopover habitats (Karpanty *et al.* 2012, p. 1).

Food Availability—Other Aspects of Climate Change

Invertebrate prey species may also be affected by other aspects of climate change. For example, freshwater inputs, tidal prisms (the volume of water in an estuary between high and low tide), and salinity regimes may be much altered, which could significantly alter the composition of estuarine communities. Furthermore, rising sea levels are expected to affect the physical shape (e.g., dimensions, configuration) of estuaries, changing their sediment compositions. This habitat change in

turn would change invertebrate densities and community composition, thus affecting shorebirds (Rehfisch and Crick 2003, p. 88; Najjar *et al.* 2000, p. 225), such as the red knot.

Food Availability—Disease, Parasites, Invasive Species, and Unknown Factors

Red knot prey species are also vulnerable to disease, parasites, invasive species, and unknown factors influencing their quality and quantity. For example, at the single largest wintering area, Bahía Lomas on Tierra del Fuego in Chile, Espoz *et al.* (2008, pp. 69, 74) found that most (91 percent) of the prey (the clam *Darina solenoides*) were much smaller and, therefore, probably less energetically profitable than the size classes of bivalves shown to be preferred by knots in many other locations. These authors suggest that food supply at Bahía Lomas may be a limiting factor for the knot population and might have contributed to population declines in the 2000s. However, no reasons for the small prey size are known (Espoz *et al.* 2008, p. 75), and it is unknown whether prey size in this area has decreased over time.

In Río Grande, Argentina, a key Tierra del Fuego wintering area, Escudero *et al.* (2012) sampled the area's two main red knot prey types (Mytilidae mussels and the clam *Darina solenoides*) in 1995, 2000, and 2008. Over the study period, significant decreases occurred in the sizes of available prey items and in the red knots' energy intake rates. Intake rates went from the highest known for red knots anywhere in the world in 2000 to among the lowest in 2008 (Escudero *et al.* 2012, pp. 359–362). These authors also found a substantial increase in the rate of red knots utilizing alternate prey species, and their findings imply that the birds incorporated other prey types into their diets to increase intake rates (Escudero *et al.* 2012, pp. 359, 362). No explanation is available for the decline in prey sizes. Escudero *et al.* (2012, p. 363) noted a high prevalence of a digenean parasite (*Bartolius pierrei*) on *D. solenoides* clams. These authors do not implicate the parasite in the declining sizes of available clams. The mussels, which were not subject to any noteworthy parasitism, also exhibited decreased sizes over the study period (Escudero *et al.* 2012, p. 359), suggesting that parasitism is not a likely explanation for declining sizes. However, disease and parasites of the red knots' mollusk prey may increase with climate change, with potential effects on both prey availability and the health of the birds exposed to these pathogens. Increases in mollusk diseases, apparently temperature-related, were detected in a review of scientific literature published from 1970 to 2001 (Ward and Lafferty 2004, p. 543).

Globally, coastal marine habitats are among the most heavily invaded systems, stemming in part from human-mediated transport of nonnative species in the ballast of ships and from intentional introductions for aquaculture and fisheries enhancement (Grosholz 2002, p. 22). For example, introduction of nonnative oysters (*Crassostrea* spp.) has been widespread within the range of the red knot (Ruesink *et al.* 2005, p. C–1). Worldwide, introduced oysters have been vectors for several invasive species of marine algae, invertebrates, and protozoa (Ruesink *et al.* 2005, pp. 669–670). Invasive species can cause disease in native mollusks, displace native invertebrates through competition or predation, alter ecosystems, and affect species at higher trophic levels such as shorebirds (Ruesink *et al.* 2005, pp. 671–674; Grosholz 2002, p. 23).

Food Availability—Sediment Placement

The quantity and quality of red knot prey may also be affected by the placement of sediment for beach nourishment or disposal of dredged material (see Factor A above for a discussion of the extent of these practices in the United States and their effects on red knot habitat). Invertebrates may be crushed or buried during project construction. Although some benthic species can burrow through a thin layer of additional sediment, thicker layers (over 35 in (90 cm)) smother the benthic fauna (Greene 2002, p. 24). By means of this vertical burrowing, recolonization from adjacent areas, or both, the benthic faunal communities typically recover. Recovery can take as little as 2 weeks or as long as 2 years, but usually averages 2 to 7 months (Greene 2002, p. 25; Peterson and Manning 2001, p. 1). Although many studies have concluded that invertebrate communities recovered following sand placement, study methods have often been insufficient to detect even large changes (e.g., in abundance or species composition), due to high natural variability and small sample sizes (Peterson and Bishop 2005, p. 893). Therefore, uncertainty remains about the effects of sand placement on invertebrate communities, and how these impacts may affect red knots.

The invertebrate community structure and size class distribution following sediment placement may differ considerably from the original community (Zajac and Whitlatch 2003, p. 101; Peterson and Manning 2001, p. 1; Hurme and Pullen 1988, p. 127). Recovery may be slow or incomplete if placed sediments are a poor grain size match to the native beach substrate (Bricker 2012, pp. 31–33; Peterson *et al.* 2006, p. 219; Greene 2002, pp. 23–25; Peterson *et al.* 2000, p. 368; Hurme and Pullen 1988, p. 129), or if placement occurs during a seasonal low point in invertebrate abundance (Burlas 2001, p. 2–20). Recovery is also affected by the beach position and thickness of the deposited material (Schlacher *et al.* 2012, p. 411). If the profile of the nourished beach and the imported sediments do not match the original conditions, recovery of the benthos is unlikely (Defeo *et al.* 2009, p. 4). Reduced prey quantity and accessibility caused by a poor sediment size match have been shown to affect shorebirds, causing temporary but large (70 to 90 percent) declines in local shorebird abundance (Peterson *et al.* 2006, pp. 205, 219).

Beach nourishment is a regular practice on the Delaware side of Delaware Bay and can affect spawning habitat for horseshoe crabs. Although beach nourishment generally preserves habitat value better than hard stabilization structures, nourishment can enhance, maintain, or decrease habitat value depending on beach geometry and sediment matrix (Smith *et al.* 2002a, p. 5). In a field study in 2001 and 2002, Smith *et al.* (2002a, p. 45) found a stable or increasing amount of spawning activity at beaches that were recently nourished while spawning activity at control beaches declined. These authors also found that beach characteristics affect horseshoe crab egg development and viability. Avissar (2006, p. 427) modeled nourished versus control beaches and found that nourishment may compromise egg development and viability. Despite possible drawbacks, beach nourishment has been recommended to prevent the loss of spawning habitat for horseshoe crabs (Kalasz 2008, p. 34; Carter *et al.* *in* Guilfoyle *et al.* 2007, p. 71; ASMFC 1998, p. 28) and is being pursued as a means of restoring shorebird habitat in Delaware Bay following Hurricane Sandy (Niles *et al.* 2013, entire; USACE 2012, entire). In areas of Delaware Bay with hard stabilization structures or high erosion rates, beach nourishment may be the only option for maintaining habitat.

Food Availability—Recreational Activities

Recreational activities can likewise affect the availability of shorebird food resources by causing direct mortality of

prey. Studies from the United States and other parts of the world have documented recreational impacts to beach invertebrates, primarily from the use of off-road vehicles (ORVs), but even heavy pedestrian traffic can have effects. Few studies have examined the potential link between these invertebrate impacts and shorebirds. However, several studies on the effects of recreation on invertebrates are considered the best available information, as they involve species and habitats similar to those used by red knots.

Although pedestrians exert relatively low ground pressures, extremely heavy foot traffic can cause direct crushing of intertidal invertebrates. In South Africa, Moffett *et al.* (1998, p. 87) found the clam *Donax serra* was slightly affected at all trampling intensities, while *D. sordidus* and the isopod *Eurydice longicornis* were affected only at high trampling intensities. Few members of the macrofauna were damaged at low trampling intensities, but substantial damage occurred under intense trampling (Moffett *et al.* 1998, p. 87). At beach access points in Australia, Schlacher and Thompson (2012, pp. 123–124) found trampling impacts to benthic invertebrates on the lower part of the beach, including significant reductions in total abundance and species richness and a shift in community structure. Studies have found that macrobenthic populations and communities respond negatively to increased human activity, but not in all cases. In addition, it can be difficult to separate the effect of human trampling from habitat modifications because these often coincide in high-use areas. In general, evidence is sparse about how sensitive intertidal invertebrates might be to human trampling (Defeo *et al.* 2009, p. 3). We are not aware of any studies looking at potential links between trampling and shorebird prey availability, but red knots often occur in areas with high recreational use (see Human Disturbance, below).

In many areas, habitat for the piping plover overlaps considerably with red knot habitats. A preliminary review of ORV use at piping plover wintering locations (from North Carolina to Texas) suggests that ORV impacts may be most widespread in North Carolina and Texas (USFWS 2009, p. 46). Although red knots normally feed low on the beach, they may also utilize the wrack line (see the ''Migration and Wintering Habitat'' section of the Rufa Red Knot Ecology and Abundance supplemental document, and Factor A—Beach Cleaning). Kluft and Ginsberg (2009, p. vi) found that ORVs killed and displaced invertebrates and lowered the total amount of wrack, in turn lowering the overall abundance of wrack dwellers. In the intertidal zone, invertebrate abundance is greatest in the top 12 in (30 cm) of sediment (Carley *et al.* 2010, p. 9). Intertidal fauna are burrowing organisms, typically 2 to 4 in (5 to 10 cm) deep; burrowing may ameliorate direct crushing. However, shear stress of ORVs can penetrate up to 12 in (30 cm) into the sand (Schlacher and Thompson 2007, p. 580).

Some early studies found minimal impacts to intertidal beach invertebrates from ORV use (Steinback and Ginsberg 2009, pp. 4–6; Van der Merwe and Van der Merwe 1991, p. 211; Wolcott and Wolcott 1984, p. 225). However, some attempts to determine whether ORVs had an impact on intertidal fauna have been unsuccessful because the naturally high variability of these invertebrate communities masked any effects of vehicle damage (Stephenson 1999, p. 16). Based on a review of the literature through 1999, Stephenson (1999, p. 33) concluded that vehicle impacts on the biota of the foreshore (intertidal zone) of sandy beaches have appeared to be minimal, at least when the vehicle use occurred during the day when studies typically take place, but very few elements of the foreshore biota had been examined.

Other studies have found higher impacts to benthic invertebrates from driving (Sheppard *et al.* 2009, p. 113; Schlacher *et al.* 2008b, pp. 345, 348; Schlacher *et al.* 2008c, pp. 878, 882; Wheeler 1979, p. iii), although it can be difficult to discern results specific to the wet sand zone where red knots typically forage. Due to the compactness of sediments low on the beach profile, driving in this zone is thought to minimize impacts to the invertebrate community. However, the relative vulnerability of species in this zone is not well known, and driving low on the beach may expose a larger proportion of the total intertidal fauna to vehicles (Schlacher and Thompson 2007, p. 581). The severity of direct impacts (e.g., crushing) depends on the compactness of the sand, the sensitivity of individual species, and the depth at which they are buried in the sand (Schlacher *et al.* 2008b, p. 348; Schlacher *et al.* 2008c, p. 886). At least one study documented a positive response of shorebird populations following the exclusion of ORVs (Defeo *et al.* 2009, p. 3; Williams *et al.* 2004, p. 79), although the response could have been due to decreased disturbance (discussed below) as well as (or instead of) increased prey availability following the closure.

In summary, several studies have shown impacts from recreational activities on invertebrate species typical of those used by red knots, and in similar habitats. The extent to which mortality of beach invertebrates from recreational activities propagates through food webs is unresolved (Defeo *et al.* 2009, p. 3). However, we conclude that these activities likely cause at least localized reductions in red knot prey availability.

Food Availability—Horseshoe Crab Harvest

Reduced food availability at the Delaware Bay stopover site due to commercial harvest and subsequent population decline of the horseshoe crab is considered a primary causal factor in the decline of the *rufa* subspecies in the 2000s (Escudero *et al.* 2012, p. 362; McGowan *et al.* 2011a, pp. 12–14; CAFF 2010, p. 3; Niles *et al.* 2008, pp. 1–2; COSEWIC 2007, p. vi; González *et al.* 2006, p. 114; Baker *et al.* 2004, p. 875; Morrison *et al.* 2004, p. 67), although other possible causes or contributing factors have been postulated (Fraser *et al.* 2013, p. 13; Schwarzer *et al.* 2012, pp. 725, 730–731; Escudero *et al.* 2012, p. 362; Espoz *et al.* 2008, p. 74; Niles *et al.* 2008, p. 101; also see Asynchronies, below). Due to harvest restrictions and other conservation actions, horseshoe crab populations showed some signs of recovery in the early 2000s, with apparent signs of red knot stabilization (survey counts, rates of weight gain) occurring a few years later (as might be expected due to biological lag times). Since about 2005, however, horseshoe crab population growth has stagnated for unknown reasons.

Under the current management framework (known as Adaptive Resource Management, or ARM), the present horseshoe crab harvest is not considered a threat to the red knot because harvest levels are tied to red knot populations via scientific modeling. Most data suggest that the volume of horseshoe crab eggs is currently sufficient to support the Delaware Bay's stopover population of red knots at its present size. However, because of the uncertain trajectory of horseshoe crab population growth, it is not yet known if the egg resource will continue to adequately support red knot populations over the next 5 to 10 years. In addition, implementation of the ARM could be impeded by insufficient funding for the shorebird and horseshoe crab monitoring programs that are necessary for the functioning of the ARM models.

Many studies have established that red knots stopping over in Delaware Bay during spring migration achieve remarkable and important weight gains to complete their migrations to the breeding grounds by feeding almost exclusively on a superabundance of horseshoe crab eggs (see the ''Wintering and Migration Food'' section of the Rufa Red Knot Ecology and Abundance supplemental document). A temporal correlation occurred between increased horseshoe crab harvests in the 1990s and declining red knot counts in both Delaware Bay and Tierra del Fuego by the 2000s. Other shorebird species that rely on Delaware Bay also declined over this period (Mizrahi and Peters *in* Tanacredi *et al.* 2009, p. 78), although some shorebird declines began before the peak expansion of the horseshoe crab fishery (Botton *et al. in* Shuster *et al.* 2003, p. 24).

The causal chain from horseshoe crab harvest to red knot populations has several links, each with different lines of supporting evidence and various levels of uncertainty: (a) Horseshoe crab harvest levels and Delaware Bay horseshoe crab populations (Link A); (b) horseshoe crab populations and red knot weight gain during the spring stopover (Link B); and (c) red knot weight gain and subsequent rates of survival, reproduction, or both (Link C). The weight of evidence supporting each of these linkages is discussed below. Despite the various levels of uncertainty, the weight of evidence supports these linkages, points to past harvest as a key factor in the decline of the red knot, and underscores the importance of continued horseshoe crab management to meet the needs of the red knot.

Horseshoe Crab—Harvest and Population Levels (Link A)

Historically, horseshoe crabs were harvested commercially for fertilizer and livestock feed. From the mid-1800s to the mid-1900s, harvest ranged from about 1 to 5 million crabs annually. Harvest numbers dropped to 250,000 to 500,000 crabs annually in the 1950s, which are considered the low point of horseshoe crab abundance. Only about 42,000 crabs were reported annually by the early 1960s. Early harvest records should be viewed with caution due to probable underreporting. The substantial commercial-scale harvesting of horseshoe crabs ceased in the 1960s (ASMFC 2009, p. 1). By 1977, the spawning population of horseshoe crabs in Delaware Bay was several times larger than during the 1960s, but was far from approaching the numbers and spawning intensity reported in the late 1800s (Shuster and Botton 1985, p. 363). No information is available on how these historical harvests of horseshoe crabs may have affected populations of red knots or other migratory shorebirds, but these historical harvests occurred at a time when shorebird numbers had also been markedly reduced by hunting (Botton *et al. in* Shuster *et al.* 2003, pp. 25–26; Dunne *in* New Jersey Audubon Society 2007, p. 25); see Factor B, above.

During the 1990s, reported commercial harvest of horseshoe crabs on the Atlantic coast of the United States increased dramatically. Modern harvests are for bait and the biomedical industry. Commercial fisheries for horseshoe crab consist primarily of directed trawls and hand harvest (e.g., collection from beaches during spawning) (ASMFC 2009, p. 14). Horseshoe crabs are used as bait in the American eel (*Anguilla rostrata*), conch (whelk) (*Busycon* spp.), and other fisheries. The American eel pot fishery prefers egg-laden female horseshoe crabs, while the conch pot fishery uses both male and female horseshoe crabs. The increase in harvest of horseshoe crabs during the 1990s was largely due to increased use as conch bait (ASMFC 2009, p. 1).

Although also used in scientific research and for other medical purposes, the major biomedical use of horseshoe crabs is in the production of Limulus Amebocyte Lysate (LAL). The LAL is a clotting agent in horseshoe crab blood that makes it possible to detect human pathogens in patients, drugs, and intravenous devices (ASMFC 2009, p. 2). The ''LAL test'' is currently the worldwide standard for screening medical equipment and injectable drugs for bacterial contamination (ASMFC 2009, p. 2; ASMFC 1998, p. 12). Horseshoe crab blood is obtained from adult crabs that are released alive after extraction is complete (ASMFC 2009, p. 2) or that are sold into the bait market (ASMFC 2009, p. 18). The ASMFC previously assumed a constant 15 percent mortality rate for bled crabs that are not turned over to the bait fishery (ASMFC 2009, p. 3) but now considers a range from 5 to 30 percent mortality (ASMFC 2012a, p. 6) more appropriate. The estimated mortality rate includes all crabs rejected for biomedical use any time between capture and release.

Bait harvest and biomedical collection have been managed separately by the ASMFC since 1999 (ASMFC 1998, pp. iii–57). Biomedical collection is currently not capped, but ASMFC considers implementing action to reduce mortality if estimated mortality exceeds a threshold of 57,500 crabs. This threshold has been exceeded several times, but thus far the ASMFC has opted only to issue voluntary guidelines to the biomedical industry (ASMFC 2009, p. 18). The ASMFC implemented key reductions in the bait harvest in 2000, 2004, and 2006 (ASMFC 2009, p. 3), and several member States have voluntarily restricted harvests below their allotted quotas (ASMFC 2012a, pp. 4, 13; N.J.S.A. 23:2B–21; N.J.R. 2139(a)). Along with the widespread use of bait-saving devices, these restrictions reduced reported landings (ASMFC 2009, p. 1) from 1998 to 2011 by over 75 percent (table 9). Further, a growing number of horseshoe crabs are being biomedically bled first before being used as bait; because such crabs count against harvest quotas (ASMFC 2012a, p. 6), this practice helps reduce total mortality rates. In addition, the National Marine Fisheries Service (NMFS) established the Carl N. Shuster Jr. Horseshoe Crab Reserve in 2001, as recommended by the ASMFC. About 30 nautical miles (55.6 km) in radius and located in Federal waters off the mouth of the Delaware Bay, the reserve is closed to commercial horseshoe crab harvest except for limited biomedical collection authorized periodically by NMFS (NOAA 2001, pp. 8906–8911).

Evidence that commercial harvests caused horseshoe crab population declines in recent decades comes primarily from a strong temporal correlation between harvest levels (as measured by reported landings, tables 8 and 9) and population levels (as characterized by ASMFC during stock assessments).

Link A, Part 1—Horseshoe Crab Harvest Levels

The horseshoe crab landings given in pounds in tables 8 and 9 come from data reported to NMFS, but should be viewed with caution as these records are often incomplete and represent an underestimate of actual harvest (ASMFC 1998, p. 6). In addition, reporting has increased over the years, and the conversion factors used to convert crab numbers to pounds have varied widely. Despite these inaccuracies, the reported landings show that commercial harvest of horseshoe crabs increased substantially from 1990 to 1998 and has generally declined since then (ASMFC 2009, p. 2). The ASMFC (1998, p. 6) also considered other data sources to corroborate a significant increase in harvest in the 1990s. These landings (pounds) may include biomedical collection, live trade, and bait fishery harvests (ASMFC 2009, p. 17).

Table 9 also shows the number of crabs harvested for bait, and the

estimated number of crabs killed incidental to biomedical collection, as reported to ASMFC. Since 1998, States have been required to report annual bait landings to ASMFC, which considers these data reliable (ASMFC 2009, p. 2). A subtotal of the bait harvest is shown for the Delaware Bay Region (New Jersey, Delaware, and a part of the harvests in Maryland and Virginia), as managed by ASMFC. The numbers given in tables 8 and 9 do not reflect the changing sex ratio of crabs harvested in the Delaware Bay Region (S. Michels pers. comm. February 15, 2013), which has shifted away from the harvest of females since management began. In 2013, the first year that the harvest level was determined using the ARM, the quota in the Delaware Bay Region is set at 500,000 males and 0 females (ASMFC 2012b, p. 1); however, we do not yet have access to the actual number of crabs removed in 2013 to compare against the quota. Since 2006, all four States in the Delaware Bay Region have frequently harvested fewer crabs than allowed by the ASMFC (ASMFC 2012a, p. 13). From 2006 to 2011, New Jersey opted not to use its 100,000-crab quota by imposing a moratorium, which the State is now considering lifting amid considerable controversy between environmental and fishing groups (Augenstein 2013, entire; ASMFC 2012a, p. 13; N.J.S.A. 23:2B–21; N.J.R. 2139(a)).

Estimates of biomedical collection increased from 130,000 crabs in 1989 to 260,000 in 1997 (ASMFC 2004, p. 12). Since mandatory reporting requirements took effect in 2004, biomedical-only crabs collected (i.e., crabs not counted against State bait harvest quotas) rose from 292,760 in 2004 (ASMFC 2009, pp. 18, 41) to 545,164 in 2011 (ASMFC 2012a, p. 6). Total estimated mortality of biomedical crabs for 2011 was 80,827 crabs (using a 15 percent post-release estimated mortality; see table 9), with a range of 31,554 to 154,737 crabs (using 5 to 30 percent estimated mortality) (ASMFC 2012a, p. 6). Using a constant 15 percent mortality of bled crabs, the estimated contribution of biomedical collection to total (biomedical plus bait) mortality rose from about 6 percent in 2004 to about 11 percent in 2011.

To put the reported harvest numbers in context, two recent assessments using different methods both estimated the population of horseshoe crabs in the Delaware Bay Region at about 20 million adults, with approximately twice as many males as females (Sweka pers. comm. May 30, 2013; Smith *et al.* 2006, p. 461). Therefore, recent annual harvests of roughly 200,000 horseshoe crabs from the Delaware Bay Region represent about 1 percent of the adult population.

TABLE 8—REPORTED ATLANTIC COAST HORSESHOE CRAB LANDINGS (POUNDS), 1970 TO 2011

[NOAA 2012d]

| Year | Total pounds reported to NMFS | Year | Total pounds reported to NMFS |
|---|---|---|---|
| 1970 | 15,900 | 1991 | 385,487 |
| 1971 | 11,900 | 1992 | 321,995 |
| 1972 | 42,000 | 1993 | 821,205 |
| 1973 | 88,700 | 1994 | 1,171,571 |
| 1974 | 16,700 | 1995 | 2,416,168 |
| 1975 | 62,800 | 1996 | 5,159,326 |
| 1976 | 2,043,100 | 1997 | 5,983,033 |
| 1977 | 473,000 | 1998 | 6,835,305 |
| 1978 | 728,500 | 1999 | 5,246,598 |
| 1979 | 1,215,630 | 2000 | 3,756,475 |
| 1980 | 566,447 | 2001 | 2,336,645 |
| 1981 | 326,695 | 2002 | 2,772,010 |
| 1982 | 526,700 | 2003 | 2,624,248 |
| 1983 | 468,600 | 2004 | 974,425 |
| 1984 | 225,112 | 2005 | 1,421,957 |
| 1985 | 614,939 | 2006 | 1,548,900 |
| 1986 | 635,823 | 2007 | 1,804,968 |
| 1987 | 511,758 | 2008 | 1,315,963 |
| 1988 | 688,839 | 2009 | 1,830,506 |
| 1989 | 1,106,645 | 2010 | 869,630 |
| 1990 | 519,057 | 2011 | 1,497,462 |

TABLE 9—REPORTED ATLANTIC COAST HORSESHOE CRAB LANDINGS (POUNDS AND CRABS), 1998 TO 2011

[(A. Nelson Pers. Comm. February 22, 2013 and November 27, 2012; ASMFC 2012a, pp. 6, 13; NOAA 2012d; ASMFC 2009, pp. 38–41); ND = No Data Available]

| Year | Total pounds reported to NMFS (from Table 8) | Numbers of crabs harvested for bait reported to ASMFC | Numbers of crabs harvested for bait reported to ASMFC, Delaware Bay Region subtotal | Estimated numbers of crabs killed by biomedical collection, based on 15 percent of the total biomedical collection reported to ASMFC |
|---|---|---|---|---|
| 1998 | 6,835,305 | 2,748,585 | 862,462 | ND |
| 1999 | 5,246,598 | 2,600,914 | 1,013,996 | ND |
| 2000 | 3,756,475 | 1,903,415 | 767,988 | ND |

TABLE 9—REPORTED ATLANTIC COAST HORSESHOE CRAB LANDINGS (POUNDS AND CRABS), 1998 TO 2011—Continued

[(A. Nelson Pers. Comm. February 22, 2013 and November 27, 2012; ASMFC 2012a, pp. 6, 13; NOAA 2012d; ASMFC 2009, pp. 38–41); ND = No Data Available]

| Year | Total pounds reported to NMFS (from Table 8) | Numbers of crabs harvested for bait reported to ASMFC | Numbers of crabs harvested for bait reported to ASMFC, Delaware Bay Region subtotal | Estimated numbers of crabs killed by biomedical collection, based on 15 percent of the total biomedical collection reported to ASMFC |
|---|---|---|---|---|
| 2001 | 2,336,645 | 1,013,697 | 607,602 | ND |
| 2002 | 2,772,010 | 1,265,925 | 728,266 | ND |
| 2003 | 2,624,248 | 1,052,493 | 584,394 | ND |
| 2004 | 974,425 | 681,323 | 278,280 | 45,670 |
| 2005 | 1,421,957 | 769,429 | 347,927 | 44,830 |
| 2006 | 1,548,900 | 840,944 | 270,241 | 49,182 |
| 2007 | 1,804,968 | 827,554 | 169,255 | 63,432 |
| 2008 | 1,315,963 | 660,794 | 190,828 | 63,285 |
| 2009 | 1,830,506 | 756,484 | 250,699 | 60,642 |
| 2010 | 869,630 | 604,548 | 165,852 | 75,428 |
| 2011 | 1,497,462 | 650,539 | 195,153 | 80,827 |

Link A, Part 2—Horseshoe Crab Population Levels

Through stock assessments, ASMFC analyzes horseshoe crab data from many different independent surveys and models (ASMFC 2004, pp. 14–24; ASMFC 2009, pp. 14–23). In the 2004 assessment, ASMFC found a clear preponderance of evidence that horseshoe crab populations in the Delaware Bay Region declined from the late 1980s to 2003, and that declines early in this evaluation period were steeper than later declines (ASMFC 2004, p. 27). Genetic analysis also suggested that the Delaware Bay horseshoe crab population was exhibiting the effects of a recent population bottleneck in the mid-1990s (Pierce *et al.* 2000, pp. 690, 691, 697), and modeling confirmed that overharvest caused declines (Smith *et al. in* Tanacredi *et al.* 2009, p. 361). In the 2009 stock assessment, ASMFC concluded that there was no evidence of ongoing declines in the Delaware Bay Region, and that the demographic pattern of significant increases matched the expectations for a recovering population (ASMFC 2009, p. 23). These findings support the temporal correlation that rising harvest levels led to population declines through the 1990s, while management actions had started reversing the decline by the mid-2000s.

Though no formal horseshoe crab stock assessment has been conducted since 2009, the ASMFC's Delaware Bay Ecosystem Technical Committee recently reviewed current data from the same trawl and dredge surveys that were evaluated in the 2004 and 2009 assessments. From these data, the committee concluded that declines were observed during the 1990s, stabilization occurred in the early 2000s, various indicators have differed with no consistent trends since 2005, confidence intervals are large, there is no clear trend apparent in recent data, and the population has at least stabilized (ASMFC 2012c, pp. 10–12). These conclusions generally support the link between harvest levels and available indicators of horseshoe crab abundance. The committee noted, however, that sustained horseshoe crab population increases have not been realized as expected. The reasons for this stagnation are unknown, and a recent change in sex ratios is also unexplained (i.e., several surveys found that the ratio of males to females increased sharply since 2010 despite several years of reduced female harvests) (S. Michels pers. comm. February 15, 2013; ASMFC 2012d, pp. 17–18; ASMFC 2010, pp. 2–3). The committee speculated that some combination of the following factors may explain the lack of recent population growth, but committee members did not reach consensus regarding which factors are more likely (ASMFC 2012c, p. 12; ASMFC 2012d, p. 2).

- Insufficient time since management actions were taken. There would likely be at least a 10-year time lag between fishery restrictions and significant population changes, corresponding to the horseshoe crab's estimated age at sexual maturity (Sweka *et al.* 2007, p. 285; ASMFC 2004, p. 31). Based on modeling, Davis *et al.* (2006, p. 222) found that the horseshoe crab population in the Delaware Bay Region had been depleted and harvest levels at that time may have been too high to allow the population to rebuild within 15 years. The most recent harvest reductions were implemented in 2006 (ASMFC 2009, p. 3; 38 N.J.R. 2139(a)).
- An early life-history (recruitment) bottleneck. Sweka *et al.* (2007, pp. 277, 282, 284) found that early-life-stage mortality, particularly mortality during the first year of life, was the most important parameter affecting modeled population growth, and that estimates of egg mortality have high uncertainty.
- Undocumented or underestimated mortality.
  - One possible source of error is the use of a constant 15 percent mortality for biomedically bled crabs. Leschen and Correia (2010a, p. 135) reported mortality rates of nearly 30 percent, although this result has been disputed (Dawson 2010, pp. 2–3; Leschen and Correia 2010b, pp. 8–10). The ASMFC now considers a range from 5 to 30 percent mortality (ASMFC 2012a, p. 6).
  - Poaching may be another factor, as documented by enforcement actions in New Jersey (Mucha 2011) and New York (Goodman 2013; Randazzo 2013; J. Gilmore pers. comm. October 24, 2012). The New Jersey incident was small, and no other violations are known to have occurred in New Jersey (D. Fresco pers. comm. November 9, 2012). Although the poaching in New York involved substantial numbers of crabs, New York waters are outside the Delaware Bay Region and should not affect population

trends in this Region. Together, though, these incidents hint that illegal harvest may be a factor, although the ASMFC law enforcement committee reported very few problems or issues in the past few years (M. Hawk pers. comm. April 29, 2013).

○ The harvest of horseshoe crabs from Federal waters that are not landed in any state, but exchanged directly to a dependent fishery, is unregulated, and, therefore, the magnitude of any such harvest is unknown (ASMFC 1998, p. 27). However, there is no evidence that such boat-to-boat transfers are occurring, and the level of any such unreported harvest is thought to be small and unlikely to have population-level effects (M. Hawk pers. comm. April 29, 2013; G. Breese pers. comm. April 26, 2013).

○ The extent of horseshoe crab mortality due to bycatch from other fisheries is unknown (ASMFC 1998, pp. 22, 26); however, at least one State does regulate and limit such bycatch (Virginia Marine Resources Commission Chapter 4 VAC 20–900–10 *et. seq.*), and horseshoe crabs caught as bycatch in the Carl N. Shuster Jr. Horseshoe Crab Reserve must be returned to the water (NOAA 2001, p. 8906).

• Limitations in the ability of surveys to capture trends. Inherent variability in most of the data sets decreases the predictive power of the surveys, especially over short time periods. For the majority of horseshoe crab indices, detecting small changes in population size would require 10 to 15 years of data. Over the short term, these indices would be able to identify only a catastrophic decline in the horseshoe crab population (ASMFC 2004, p. 31).

• An ecological shift. Examples are available from other fisheries, such as weakfish (*Cynoscion regalis*). The weakfish quota was dramatically cut, but the population never rebounded. Despite some years of excellent recruitment, adult weakfish stocks have not recovered perhaps due to increased predation (S. Doctor pers. comm. November 8, 2012). Changes in predation, competition, or other ecological factors can cause a population to stabilize at a new, lower level.

In addition to the aforementioned potential causes for lack of recent growth in horseshoe crab populations, threats to horseshoe crab spawning habitat are discussed under Factor A above. Another potential threat to horseshoe crab populations recently emerged—the proposed importation of nonnative horseshoe crab species for use as bait. Nonnative species could carry diseases and parasites that could put the native species at risk, and exports to the U.S. bait market could hasten declines in the Asian species, which is discussed below. The Service currently lacks the regulatory authority to restrict the importation of these species on the Federal level (i.e., under the Lacey Act, see supplemental document—Factor D), although Congress is deliberating legislation to expand that authority (USFWS 2013, pp. 1–2). In the meantime, ASMFC has recommended that all member States ban the import and use of Asian horseshoe crabs as bait in State water fisheries along the Atlantic coast (ASMFC 2013, entire), although no such State bans have yet gone into effect.

Asian horseshoe crab species are themselves in decline (ASMFC 2013, p. 2), and their status could indirectly affect the American species. Chinese scientists have reported rapid growth in biomedical collection and correspondingly rapid population declines in harvested populations. Anecdotal observations and predictions from scientists close to the industry suggest that such harvest is unsustainable. If the Asian biomedical industry were to collapse due to exhausted stocks of these species, then the worldwide demand for amebocyte lysate would be focused on the American horseshoe crab alone, potentially increasing biomedical collection pressure in the United States (Smith and Millard 2011, p. 1). However, research is being conducted on substitutes for LAL (PhysOrg 2011; Janke 2008, entire; Chen 2006, entire) and on artificial bait for the conch and eel fisheries (Bauers 2013b; Ferrari and Targett 2003, entire). If successful, any such developments could reduce or eliminate the demand for harvesting horseshoe crabs.

Horseshoe Crab—Crab Population and Red Knot Weight Gain (Link B)

Attempts have generally not been made to tie weight gain in red knots during the spring stopover to the total horseshoe crab population size in the Delaware Bay Region. Instead, most studies have looked for correlations between red knot weight gain and either the abundance of spawning horseshoe crabs, or the density of horseshoe crab eggs in the top 2 in (5 cm) of sediment (within the reach of the birds). Other studies provide information regarding trends in egg sufficiency and red knot weight gain over time.

Link B, Part 1—Horseshoe Crab Spawning Abundance

A baywide horseshoe crab spawning survey has been conducted under consistent protocols since 1999. Based on data through 2011, numbers of spawning females have not increased or decreased, while numbers of spawning males showed a statistically significant increase. Though not statistically significant, female crab trends were negative in Delaware and positive in New Jersey (Zimmerman *et al.* 2012, pp. 1–2). The ASMFC Delaware Bay Ecosystem Technical Committee recently questioned whether the spawning survey has reached ''saturation'' levels, at which appreciable increases in spawning crab numbers may not be detected under the current survey design. The committee is investigating this question (ASMFC 2012d, p. 7).

Strong evidence for a link between numbers of spawning crabs and red knot weight gain comes from the modeling that underpins the ARM. The probability that a bird arriving at Delaware Bay weighing less than 6.3 oz (180 g) will attain a weight of greater than 6.3 oz (180 g) was positively related to the estimated female crab abundance on spawning beaches during the migration stopover (McGowan *et al.* 2011a, p. 12).

Link B, Part 2—Horseshoe Crab Egg Density

Due to the considerable vertical redistribution (digging up) of buried eggs (4 to 8 in (10 to 20 cm) deep) by waves and further spawning activity, surface egg densities (in the top 2 in (5 cm) of sediment) are not necessarily correlated with the density of spawning horseshoe crabs (Smith *et al.* 2002b, p. 733). Therefore, egg density surveys are not meant as an index of horseshoe crab abundance. Instead, attempts have been made to use the density of eggs in the top few inches of sediment as an index of food availability for shorebirds (Dey *et al.* 2013, p. 8), for example by correlating these egg densities with red knot weight gain.

Egg density surveys were conducted in New Jersey in 1985, 1986, 1990, and 1991, and annually since 1996. Surveys have been carried out in Delaware since 1997. Methodologies have evolved over time, but have been relatively consistent since 2005. Direct comparisons between New Jersey and Delaware egg density data are inappropriate due to differences in survey methodology between the two States, despite standardization efforts (ASMFC 2012d, pp. 11–12; Niles *et al.* 2008, pp. 33, 44, 46).

Niles *et al.* (2008, p. 45) reported egg densities from 1985, 1986, 1990, and 1991 an order of magnitude higher than for the period starting in 1996. Conversion factors were developed to

allow for comparison between the 1985 to 1986 and the 1990 to 1991 data points (Niles *et al.* 2008, p. 44), and statistical analysis found that data points from 2000 to 2004 can be directly compared to those from 2005 to 2012 without a conversion factor (i.e., a 2005 change in sampling method did not affect the egg density results) (Dey *et al.* 2011b, p. 12). However, comparisons between the earlier data points (1985 to 1999) and egg densities since 2000 are confounded by changes in methodology and investigators, and lack of conversion factors.

Higher confidence is attached to trends since 2005 because methodologies have been consistent over that period. The ASMFC's Delaware Bay Ecosystem Technical Committee recently reviewed the most current egg density data from both States. The committee concluded there was no significant trend in baywide egg densities from 2005 to 2012. Looking at the two States separately, Delaware showed no significant trend in egg density, while the trends in New Jersey were positive. Markedly higher egg densities on some beaches (e.g., Mispillion Harbor, Delaware and Moores Beach, New Jersey) strongly influence Statewide and baywide trends. These higher densities predictably occur in a few locations (ASMFC 2012d, p. 9). If one of these high-density beaches is excluded (Mispillion Harbor), Delaware shows a negative trend from 2005 to 2012 (A. Dey pers. comm. October 12, 2012).

Using data from 2005 to 2012, Dey *et al.* (2013, pp. 8, 18) found a statistically strong relationship between the proportion of red knots reaching the estimated optimal departure weight (6.3 oz (180 g) or more) from May 26 to 28, and the baywide median density of horseshoe crab eggs, excluding Mispillion Harbor, during the third and fourth weeks of May. This statistical relationship suggests that the egg survey data may provide a reasonable measure of egg availability and its link to red knot weight gain (ASMFC 2012d, p. 11). However, the exclusion of Mispillion Harbor is problematic because egg densities at this site are an order of magnitude higher than at other beaches (Dey *et al.* 2013, pp. 10, 14); Mispillion Harbor has supported large numbers of red knots even in years when the measure of baywide egg densities has been low, consistently containing upwards of 15 to 20 percent of all the knots recorded in Delaware Bay (Lathrop 2005, p. 4). A mathematical relationship between egg densities and red knot departure weights holds with the addition of Mispillion Harbor, but is statistically weaker (Dey *et al.* 2013, pp. 18–19; H. Sitters pers. comm. April 26, 2013). In addition, problems have been noted with both the egg density surveys and the characterization of red knot weights relative to particular dates; each are discussed below.

Regarding the egg surveys, samples are similarly collected across the bay, but egg separation and counting methodologies are substantially different between New Jersey and Delaware and have not been fully documented in either State. In addition, very high spatial and temporal variability in surface egg densities limits the statistical power of the surveys (ASMFC 2012d, p. 11). Based on the sampling methodology used in both States (Dey *et al.* 2011b, pp. 3–4), the surveys would be expected to have only about a 75 percent chance of detecting a major (50 percent) decline in egg density over 5 years (Pooler *et al.* 2003, p. 700). In addition, the sampled segments on a particular beach may not be representative of egg densities throughout that larger beach (Pooler *et al.* 2003, p. 700) and may not reflect the red knots' preferential feeding in microhabitats where eggs are concentrated, such as at horseshoe crab nests (Fraser *et al.* 2010, p. 99), the wrack line (Karpanty *et al.* 2011, p. 990; Nordstrom *et al.* 2006a, p. 438), and shoreline discontinuities (Botton *et al.* 1994, p. 614).

Data on the proportion of birds caught at 6.3 oz (180 g) or greater from May 26 to 28 should also be interpreted with caution (Dey *et al.* 2011a, p. 7). The proportion of the whole stopover population that is present in the bay and available to be caught and weighed from May 26 to 28 varies from year to year. In addition, the late May sampling event cannot take account of those birds that achieve adequate mass and either depart Delaware Bay early (Dey *et al.* 2011a, p. 7) or spend more time roosting away from the capture sites (which are located in foraging areas) (Robinson *et al.* 2003, p. 11). The fact that birds arrive and depart the stopover area at different times can also confound attempts to calculate weight gain over the course of the stopover season, underestimating the gains by as much as 30 to 70 percent (Gillings *et al.* 2009, pp. 55, 59; Zwarts *et al.* 1990, p. 352). Modeling for the ARM produced a strong finding that the probability of capturing light birds (less than 6.3 oz; 180 g) is considerably higher (0.071) than of capturing heavy birds (greater than 6.3 oz; 180 g) (0.019) (McGowan *et al.* 2011a, p. 8). In addition, a single target weight and date for departure is likely an oversimplification; while likely to hold true for the population average, individual birds likely employ diverse ''strategies'' for departure date and weight influenced by the bird's size, condition, arrival date, and other factors (Robinson *et al.* 2003, p. 13).

Despite the high uncertainty of the egg density data and a known bias in recorded red knot weights, these metrics do show a significant positive correlation to one another, and we have, therefore, considered this information. Although the birds captured and weighed at the end of May are very likely lighter than the population-wide average departure weight, these birds may represent a useful index of late-departing knots that may be particularly dependent on a superabundance of horseshoe crab eggs (see Asynchronies, below).

Link B, Part 3—Trends in Horseshoe Crab Egg Sufficiency

Looking at the duration that shorebirds spent in Delaware Bay early versus late in the stopover period, Wilson (1991, pp. 845–846) concluded there was no evidence of food depletion, but he did not account for time constraints that late-arriving birds may face. In 1990 and 1991, Botton *et al.* (1994, pp. 612–613) found that all but one of the seven beaches sampled were capable of supporting at least four birds per 3.3 ft (1 m) of shoreline, and the supply of eggs was sufficient to accommodate the number of birds using these beaches at that time.

By 2002 and 2003, Gillings *et al.* (2007, p. 513) found that few beaches provided high enough densities of buried eggs (2 to 8 in (5 to 20 cm) deep) for rapid egg consumption (i.e., through vertical redistribution, as discussed above), making birds dependent on a smaller number of sites where conditions were suitable for surface deposition (e.g., from the receding tide). Comparing survey data from 1992 and 2002, usage of Delaware Bay by foraging gulls declined despite growing regional gull populations, another indication that birds were responding to reduced availability of horseshoe crab eggs around 2002 (Sutton and Dowdell 2002, p. 6). Based on models of red knot foraging responses observed in 2003 and 2004, Hernandez (2005, p. 35) estimated egg densities needed to optimize foraging efficiency, and these estimates were generally consistent with requisite egg densities calculated by Haramis *et al.* (2007, p. 373) based on captive red knot feeding trials. These studies suggested that available egg densities in the early 2000s may have been insufficient for red knots to meet their energetic requirements (Niles *et al.*

2008, pp. 36–39). A geographic contraction of red knots into fewer areas of Delaware Bay may have also indicated egg insufficiency. From 1986 to 1990, red knots were relatively evenly distributed along the Delaware Bay shoreline in both New Jersey and Delaware. In comparison, there was a much greater concentration of red knots in the fewer areas of high horseshoe crab spawning activity from 2001 to 2005 (Lathrop 2005, p. 4). In 2004, Karpanty *et al.* (2006, p. 1706) found that only about 20 percent of the Delaware Bay shoreline contained enough eggs to have a greater than 50 percent chance of finding red knots, and that red knots attended most or all of the available egg concentrations.

Newer evidence suggests that the apparent downward trend in egg sufficiency may have stabilized by the mid-2000s. In 2004 and 2005, Karpanty *et al.* (2011, p. 992) found that eggs became depleted in the wrack line, but also found several other lines of evidence that egg numbers were sufficient for the red knot stopover populations present in those years. This evidence included egg counts over time, bird foraging rates and behaviors, egg exclosure experiments, and lack of competitive exclusion (Karpanty *et al.* 2011, p. 992).

Link B, Part 4—Trends in Red Knot Weight Gain

From 1997 to 2002, Baker *et al.* (2004, p. 878) found that an increasing proportion of red knots, particularly those birds that arrived late in Delaware Bay, failed to reach threshold departure masses of 6.3 to 7.1 oz (180 to 200 g). Despite using a slightly different target weight and departure date, Atkinson *et al.* (2003b, p. 3) had reached the same conclusion that, relative to 1997 and 1998, an increasing proportion of birds failed to reach target weights through 2002. Modeling conducted by Atkinson *et al.* (2007, p. 892) suggested that, due to poor foraging and weather conditions, red knot fueling (temporal patterns and rates of weight gain) proceeded as normal from 1997 to 2002, except in 2000, but not in 2003 or 2005.

Dey *et al.* (2011a, p. 6) found a significant quadratic (a mathematical relationship between one variable and the square of another variable) relationship between the percent of red knots weighing 6.3 oz (180 g) or more in late May (May 26 to 28) and time (1997 to 2011). The strength of the quadratic relationship owes much to the very low proportion (0 percent) of heavy birds in 2003, but it is still significant if the 2003 data are omitted. This relationship holds with the addition of 2012 data and shows a downward trend in the percent of heavy birds since 1997, which started to reverse by the late 2000s; however, the percent of heavy birds in late May has not yet returned to 1990s levels (A. Dey pers. comm. October 12, 2012).

It is noteworthy that the downward trend in the percent of late-May heavy birds appears to have leveled off around 2005 (A. Dey pers. comm. October 12, 2012), around the same time that Karpanty *et al.* (2011, p. 992) found evidence of sufficient horseshoe crab eggs, and following the period of horseshoe crab population growth (ASMFC 2012c, pp. 10–12) that was discussed under Population Levels (Link A, Part 2), above. Peak counts of red knots in Delaware Bay have also been generally stable since approximately this same time (A. Dey pers. comm. October 12, 2012; Dey *et al.* 2011a, p. 3), although at a markedly reduced level. These lines of evidence suggest that the imminent threat of egg insufficiency was stabilized, though not fully abated, around 2005. Because of the uncertain trajectory of horseshoe crab population growth since 2005, it is not yet known if the egg resource will continue to adequately support red knot populations in the future.

Horseshoe Crab—Red Knot Weight Gain and Survival/Reproduction (Link C)

In the causal chain from horseshoe crab harvest to red knot populations, the highest uncertainty is associated with the link between red knot weight gain at the Delaware Bay in May and the birds' survival, reproduction, or both, during the subsequent breeding season. Using data from 1997 to 2002 and slightly different target departure dates (May 31) and weights (6.9 oz (195 g)), early modeling by Atkinson *et al.* (2003b, pp. 15–16) found support for the hypothesis that birds with lower departure weights have lower survival rates and that survival rates apparently decreased over this time. Demonstrating the importance of the stopover timing (see Asynchronies, below), survival rates of birds caught from May 10 to May 20 did not seem to change from 1997 to 2002, and was consistently high. However, for birds caught after May 20, the range of survival rates was much wider, and birds were predicted to have higher mortality rates (Atkinson *et al.* 2003b, p. 16).

More recently, two benchmark studies have attempted to measure the strength of the relationship between departure weight from Delaware Bay and subsequent survival using mathematical models. By necessity, this type of modeling relies on numerous assumptions, which increases uncertainty in the results. Both studies took advantage of the extensive body of red knot field data, which makes the models more robust than would be possible for less well-studied species. Nevertheless, the two modeling efforts produced somewhat inconsistent results.

Baker *et al.* (2004, pp. 878–897) found that average annual survival declined significantly from an average of 85 percent from 1994 to 1998 to 56 percent from 1998 to 2001. Linking weight gain to survival, Baker *et al.* (2004, p. 878) found that red knots known to survive to a later year, through recaptures or resightings throughout the flyway, were heavier at initial capture than birds never seen again. According to Baker *et al.* (2004, entire), mean predicted body mass of known survivors was greater than 6.3 oz (180 g) in each year of the study (as cited in McGowan *et al.* 2011a, p. 14).

Using data from 1997 to 2008, McGowan *et al.* (2011a, p. 13) found considerably higher survival rates (around 92 percent) than Baker *et al.* (2004, entire) had reported. McGowan *et al.* (2011a, p. 9) did confirm that heavy birds had a higher average survival probability than light birds, but the difference was small (0.918 versus 0.915). Based on the work of Baker *et al.* (2004), McGowan *et al.* (2011a, p. 13) had expected a larger difference in survival rates between heavy and light birds.

However, the average survival rate (1997 to 2008) can mask differences among years. Looking at these temporal differences, the findings of McGowan *et al.* (2011a, entire) were more consistent with Baker *et al.* (2004, entire), and McGowan's year-specific survival rate estimates for 1997 to 2002 fell within the ranges presented by Baker *et al.* (2004). McGowan's lowest survival estimates occurred in 1998, just before the period of sharpest declines in red knot counts (McGowan *et al.* 2011a, p. 13) (see supplemental document—Rufa Red Knot Ecology and Abundance—tables 2 and 10). Also, the survival of light birds was lower than heavy birds in 6 of the 11 years analyzed. For example, the 1998 to 1999 survival rate estimate was 0.851 for heavy birds and only 0.832 for light birds (McGowan *et al.* 2011a, p. 9). Finally, McGowan *et al.* (2011a, p. 14) noted that the data presented by Baker *et al.* (2004) show survival rates increased during 2001 and 2002. These points of comparison between the two studies suggest that the years of the Baker *et al.* (2004, entire) study may have corresponded to the period of sharpest red knot declines that

have subsequently begun to stabilize. Stabilization around the mid-2000s is also supported by several other lines of evidence, as discussed under Trends in Red Knot Weight Gain (Link B, Part 4), above. However, McGowan *et al.* (2011a, p. 14) suggested several possible methodological reasons why their results differed from Baker *et al.* (2004, entire); primarily, that the newer study attempted to account for the known bias toward capturing lighter birds.

McGowan *et al.* (2011b, entire) simulated population changes of horseshoe crabs and red knots using reported horseshoe crab harvest from 1998 to 2008 and the red knot survival and mass relationships reported by McGowan *et al.* (2011a). These tests demonstrated that the survival estimates reported by McGowan *et al.* (2011a) are potentially consistent with a projected median red knot population decline of over 40 percent (McGowan *et al.* 2011a, p. 13), over the same period in which declining counts were recorded in both Delaware Bay and Tierra del Fuego.

A line of corroborating evidence comes from the demonstration of similar linkages in other *Calidris canutus* subspecies. For example, Morrison (2006, pp. 613–614) and Morrison *et al.* (2007, p. 479) linked survival rates to the departure condition of spring migrants in *C.c. islandica.*

In addition to survival, breeding success was suggested by Baker *et al.* (2004, pp. 875, 879) as being linked to food availability in Delaware Bay, based on a 47 percent decline in second-year birds observed in wintering flocks. However, there may be segregation of juvenile and adult red knots on the wintering grounds, and little information is available on where juveniles spent the winter months (USFWS and Conserve Wildlife Foundation 2012, p. 1). Thus, shifting juvenile habitat use cannot be ruled out as a factor in the decline of young birds observed at known (adult) wintering areas.

Although Baker *et al.* (2004, p. 879) postulated that the observed decrease in second-year birds was linked to food availability in Delaware Bay, no direct links have been established between horseshoe crab egg availability and red knot reproductive success. Red knots typically do not rely on stored fat for egg production or the subsequent rearing of young, having used up most of those reserves for the final migration flight and initial survival on the breeding grounds (Morrison 2006, p. 612; Piersma *et al.* 2005, p. 270; Morrison and Hobson 2004, p. 341; Klaassen *et al.* 2001, p. 794). The fact that body stores are not directly used for egg or chick production suggests that horseshoe crab egg availability is unlikely to affect red knot reproductive rates, other than through an influence on the survival of prebreeding adults. However, studies of shorebirds as a group indicate that if birds arrive in a poor energetic state on the destination area, they would have a very small chance of reproducing successfully (Piersma and Baker 2000, p. 123). Further, from studies of the *Calidris canutus islandica,* Morrison (2006, pp. 610–612) and Morrison *et al.* (2005, p. 449) found that a major function of stored fat and protein may be to facilitate a transformation from a physiological state suitable for migration to one suitable, and possibly required, for successful breeding. These findings suggest that a more direct link between the condition of red knots leaving Delaware Bay and reproductive success could exist but has not yet been documented. Modeling for the ARM includes components to test for linkages between Delaware Bay departure weights and reproductive success and could provide future insights into this question (McGowan *et al.* 2011b, p. 118).

Horseshoe Crab—Adaptive Resource Management

In 2012, the ASMFC adopted the ARM for the management of the horseshoe crab population in the Delaware Bay Region (ASMFC 2012e, p. 1). The ARM was developed with input from shorebird and fisheries biologists from the Service, States, and other agencies and organizations. The ARM modeling links horseshoe crab and red knot populations, to meet the dual objectives of maximizing crab harvest and meeting red knot population targets (McGowan *et al.* 2011b, p. 122). The ARM uses competing models to test hypotheses and eventually reduce uncertainty about the influence that conditions in Delaware Bay exert on red knot populations (McGowan *et al.* 2011b, pp. 130–131). The framework is designed as an iterative process that adapts to new information and the success of management actions (ASMFC 2012e, p. 3). Under the ARM, the horseshoe crab harvest caps authorized by ASMFC are explicitly linked to red knot population recovery targets starting in 2013 (ASMFC 2012e, p. 4).

As long as the ARM is in place and functioning as intended, ongoing horseshoe crab harvests should not be a threat to the red knot. However, the harvest regulations recommended by the ARM require data from two annual, baywide monitoring programs—the trawl survey conducted by the Virginia Polytechnic Institute (Virginia Tech) and the Delaware Bay Shorebird Monitoring Program. No secure funding is in place for either of these programs. For example, in fall 2012, the trawl survey had to be scaled back due to lack of funds (ASMFC 2012d, p. 8). Reduced survey efforts may impact the ability of the ASMFC to implement the ARM as intended (ASMFC 2012c, p. 13). If the ARM cannot be implemented in any given year, ASMFC would choose between two options based on which it determines to be more appropriate—either use the previous year's harvest levels (as previously set by the ARM), or revert to an earlier management regime (known as Addendum VI, which was in effect from August 2010 to February 2012) (ASMFC 2012e, p. 6; ASMFC 2010, entire). Although the horseshoe crab fishery would continue to be managed under either of these options, the explicit link to red knot populations would be lost.

In addition, some uncertainty exists regarding how to define the Delaware Bay horseshoe crab population. Currently all crabs harvested from New Jersey and Delaware, as well as part of the harvests from Maryland and Virginia, are believed to come from the Delaware Bay population. This conclusion was based on resightings in these four States of crabs that had been marked with tags in Delaware Bay from 1999 to 2003 (ASMFC 2006, p. 4). Further work (tagging and genetic analysis) suggests that little exchange occurs between the Delaware Bay and Chesapeake Bay horseshoe crab populations, but crabs do move between Delaware Bay and the Atlantic coastal embayments from New Jersey through Virginia (ASMFC 2012e, pp. 3–4; Swan 2005, p. 28; Pierce *et al.* 2000, p. 690). However, other information adds complexity to our understanding of the population structure. In a genetic analysis of horseshoe crabs from Maine to Florida's Gulf coast, King *et al.* (2005, p. 445) found four distinct regional groupings, including a mid-Atlantic group extending from Massachusetts to South Carolina. In addition, in a long-term tagging study, Swan (2005, p. 39) found evidence suggesting the existence of subpopulations of Delaware Bay horseshoe crabs. Finally, since most tagging efforts, and most resightings of tagged crabs, occur on spawning beaches, the distribution and movements of horseshoe crabs in offshore waters (where most of the harvest occurs via trawls) are poorly known (Swan 2005, pp. 30, 33, 37). We conclude that the ASMFC's current delineation of the Delaware Bay Region horseshoe crab population is based on

best available information and is appropriate for use in the ARM modeling, but we acknowledge some uncertainty regarding the population structure and distribution of Delaware Bay horseshoe crabs.

Food Availability—Summary

Reduced food availability at the Delaware Bay stopover site due to commercial harvest of the horseshoe crab is considered a primary causal factor in the decline of rufa red knot populations in the 2000s. Due to harvest restrictions and other conservation actions, horseshoe crab populations showed some signs of recovery in the early 2000s, with apparent signs of red knot stabilization (survey counts, rates of weight gain) occurring a few years later (as might be expected due to biological lag times). Since about 2005, however, horseshoe crab population growth has stagnated for unknown reasons. Under the current management framework (the ARM), the present horseshoe crab harvest is not considered a threat to the red knot. However, it is not yet known if the horseshoe crab egg resource will continue to adequately support red knot populations over the next 5 to 10 years. In addition, implementation of the ARM could be impeded by insufficient funding.

The causal role of reduced Delaware Bay food supplies in driving red knot population declines shows the vulnerability of red knots to declines in the quality or quantity of their prey. This vulnerability has also been demonstrated in other *Calidris canutus* subspecies, although not to the severe extent experienced by the rufa red knot. In addition to the fact that horseshoe crab population growth has stagnated, red knots now face several emerging threats to their food supplies throughout their nonbreeding range. These threats include small prey sizes (from unknown causes) at two key wintering sites on Tierra del Fuego, warming water temperatures that may cause mollusk population declines and range contractions (including the likely loss of a key prey species from the Virginia spring stopover within the next decade), ocean acidification to which mollusks are particularly vulnerable, physical habitat changes from climate change affecting invertebrate communities, possibly increasing rates of mollusk diseases due to climate change, invasive marine species from ballast water and aquaculture, and the burial and crushing of invertebrate prey from sand placement and recreational activities. Although threats to food quality and quantity are widespread, red knots in localized areas have shown some adaptive capacity to switch prey when the preferred prey species became reduced (Escudero *et al.* 2012, pp. 359, 362; Musmeci *et al.* 2011, entire), suggesting some adaptive capacity to cope with this threat. Nonetheless, based on the combination of documented past impacts and a spectrum of ongoing and emerging threats, we conclude that reduced quality and quantity of food supplies is a threat to the rufa red knot at the subspecies level, and the threat is likely to continue into the future.

Factor E—Asynchronies During the Annual Cycle

For shorebirds, the timing of arrivals and departures from wintering, stopover, and breeding areas must be precise because prey abundance at staging areas is cyclical, and there is only a narrow window in the arctic summer for courtship and reproduction (Botton *et al. in* Shuster *et al.* 2003, p. 6). Because the arctic breeding season is short, northbound birds must reach the nesting grounds as soon as the snow has melted. Early arrival and rapid nesting increases reproductive success. However, a countervailing time constraint is that the seasonal supply of food resources along the migration pathways prevents shorebirds from moving within flight distance of the breeding grounds until late spring (Myers *et al.* 1987, pp. 21–22). The timing of southbound migration is also constrained, because the abundance of quality prey at stopover sites gradually decreases as the fall season progresses (van Gils *et al.* 2005b, pp. 126–127; Myers *et al.* 1987, pp. 21–22). Migration timing is also influenced by the enormous energy required for birds to complete the long-distance flights between wintering and breeding grounds. Northbound shorebirds migrate in a sequence of long-distance flights alternating with periods of intensive feeding to restore energy reserves. Most of the energy stores are depleted during the next flight; thus, a bird's ability to accumulate a small additional energetic reserve may be crucial if its migration gets delayed by poor weather or if feeding conditions are poor upon arrival at the next destination (Myers *et al.* 1987, pp. 21–22).

Particularly for species like the red knot that show fidelity to sites with ephemeral food and habitat resources used to fuel long-distance migration, migrating animals may incur fitness consequences if their migration timing and the availability of resources do not coincide (i.e., are asynchronous or ''mismatched''). The joint dynamics of resource availability and migration timing may play a key role in influencing annual shorebird survival and reproduction. The mismatch hypothesis is of increasing relevance because of the potential asynchronies created by changes in phenology (periodic life-cycle events) related to global climate change (McGowan *et al.* 2011a, p. 2; Smith *et al.* 2011a, p. 575; Meltofte *et al.* 2007, p. 36).

Shorebird migration depends primarily on celestial cues (e.g., day length) and is, therefore, less influenced by environmental variation (e.g., water or air temperatures) than are the life cycles of many of their prey species (McGowan *et al.* 2011a, p. 16); thus, shorebirds are vulnerable to worsening asynchronies due to climate change. Studying captive *Calidris canutus canutus* held under a constant temperature and light regime for 20 months, Cadée *et al.* (1996, p. 82) found evidence for endogenous (caused by factors inside the animal) circannual (approximately annual) rhythms of flight feather molt, body mass, and plumage molt. Studying *C.c. canutus* and *C.c. islandica,* Jenni-Eiermann *et al.* (2002, p. 331) and Landys *et al.* (2004, p. 665) found evidence that thyroid and corticosterone hormones play a role in regulating the annual cycles of physical changes.

We have no evidence concerning the exact nature of the external timers that synchronize these endogenous rhythms to the outside world (Cadée *et al.* 1996, p. 82). Photoperiod is known to be a powerful timer for many species' circannual rhythms, and a role for day length as a timer is consistent with observations that captive *C.c. canutus* exposed to day length variation in outdoor aviaries retained pronounced annual cycles in molt and body mass; however, these experiments do not exclude a role for additional timers besides photoperiod. The complex nature of the annual changes in photoperiod experienced by trans-equatorial migrants is not fully understood; this is especially true for such birds like *C. canutus* where some populations winter in the southern hemisphere while other populations winter in the northern hemisphere (Cadée *et al.* 1996, p. 82). While uncertainty exists about the extent to which the timing of the red knot's annual cycle is controlled by endogenous and celestial factors (as opposed to environmental factors); based on the experiments with captive *C.c. canutus,* it is reasonable to conclude that these factors will constrain the knot's ability to adapt to the shifting temporal and geographic

patterns of favorable food and weather conditions that are expected to occur with global climate change.

Looking at data from Northern Europe from 1923 to 2008 for 43 taxonomically diverse birds (including shorebirds but not *Calidris canutus*), Petersen *et al.* (2012, p. 65) found that short-distance migrants arrived an average of 0.38 days earlier per year, while the spring arrival of long-distance migrants had advanced an average of 0.17 days per year. Pooling both groups, spring arrival had shifted an average of 3 weeks earlier over the 80-year study period. Changes in environmental conditions (e.g., temperature, precipitation) during winter and spring explained much of the change in phenology. These findings suggest that short-distance migrants may respond more strongly to climate change than long-distance migrants, such as the red knot, which might adapt more slowly resulting in less time for breeding and potentially mis-timed breeding in this group. These results also suggest that differential adaptation capacities between short- and long-distance migrants could alter the interspecific competition pressures faced by various species (Petersen *et al.* (2012, p. 70) caused by the formation of new and novel assemblages of bird species that did not previously occur together in space and time.

The successful annual migration and breeding of red knots is highly dependent on the timing of departures and arrivals to coincide with favorable food and weather conditions. The frequency and severity of asynchronies is likely to increase with climate change. In addition, stochastic encounters with unfavorable conditions are more likely to result in population-level effects for red knots now than when population sizes were larger, as reduced numbers may have reduced the resiliency of this subspecies to rebound from impacts.

Asynchronies—Delaware Bay

Because shorebird staging times are shortest and fueling rates are highest at the last stopover site before birds head to the arctic breeding grounds, there appears to be little ''slack'' time at late stages in the migration (González *et al.* 2006, p. 115; Piersma *et al.* 2005, p. 270) (i.e., birds need to arrive and depart within a narrow time window and need to attain rapid weight gain during that window). For a large majority of red knots, the final stopover before the Arctic is in Delaware Bay.

Delaware Bay—Late Arrivals

Baker *et al.* (2004, p. 878) found that the late arrival of red knots in Delaware Bay was a key synergistic factor (acting in conjunction with reduced availability of horseshoe crab eggs) accounting for declines in survival rates observed, comparing the period 1994 to 1996 with the period 1997 to 2000. These authors noted that red knots from southern wintering areas (Argentina and Chile) tended to arrive later than northern birds throughout the study period, but more so in 2000 and 2001. A large number of knots arrived late again in 2002 (Robinson *et al.* 2003, p. 11). In data from 1998 to 2002, Atkinson *et al.* (2003b, p. 16) found increasing evidence that numbers of light-weight birds were passing through the bay between May 20 and 30. Corroborating evidence comes from Argentina and suggests that, for unknown reasons, northward migration of Tierra del Fuego birds had become 1 to 2 weeks later since 2000 (Niles *et al.* 2008, p. 2), which probably led to more red knots arriving late in Delaware Bay.

Research has shown that late-arriving birds have the ability to make up lost time by gaining weight at a higher rate than usual, provided they have sufficient food resources (Niles *et al.* 2008, p. 2; Atkinson *et al.* 2007, pp. 885, 889; Robinson *et al.* 2003, pp. 12–13). However, late-arriving birds failed to do so in years (e.g., 2003, 2005) when horseshoe crab egg availability was low (Niles *et al.* 2008, p. 2; Atkinson *et al.* 2007, p. 885). Looking at data from 1998 to 2002, Atkinson *et al.* (2003b, p. 16) found that intra-season rates of weight gain had not changed significantly. Using an early model linking red knot weight gain and subsequent survival, these authors concluded that arriving late was actually a more significant factor than food availability in the declining percentage of red knots reaching target weights by the end of May (Atkinson *et al.* 2003b, p. 16). In a later modeling effort, Atkinson *et al.* (2007, p. 892) confirmed that fueling (temporal patterns and rates of weight gain) proceeded as normal from 1997 to 1999, from 2001 to 2002, and in 2004, but fueling was below normal in 2000, 2003, and 2005 due to poor foraging and weather conditions. The results of Atkinson *et al.* (2007, p. 892) suggest that the reduced survival rates calculated by Baker *et al.* (2004, entire) from 1998 to 2002 were more likely the result of late arrivals than food availability, since fueling was normal in all but one of those years.

The effects of weather on the red knot's migratory schedule were documented in 1999, when a La Niña event (an occasional abnormal cooling of tropical waters in the eastern Pacific from unknown causes) occurred and the red knots migrating to Delaware Bay were subject to extended, strong headwinds (Robinson *et al.* 2003, pp. 11–12). The first birds arrived almost a week later than normal. Although most red knots had left Delaware Bay by the end of May, an unusually large number (several thousand) of knots were recorded in central Canada in mid-June, suggesting that many birds did not reach the breeding grounds or quickly returned south without breeding in that year. It is possible that many birds did not put on adequate weight as a result of the weather-induced delay and were not in a good enough condition to breed (Robinson *et al.* 2003, pp. 11–12). In addition to the unknown causes that may have contributed to chronic late arrivals in Delaware Bay in the 2000s, stochastic weather events like the 1999 La Niña can affect the timing of the red knot's annual cycle and may become more erratic or severe due to climate change.

Delaware Bay—Timing of Horseshoe Crab Spawning

Even those red knots arriving early or on time in Delaware Bay are very likely to face poor feeding conditions if horseshoe crab spawning is delayed. Feeding conditions for red knots were poor in those years when the timing of the horseshoe crab spawn was out of sync with the birds' spring stopover period. In years that spawning was delayed due to known weather anomalies (e.g., cold weather, storms), the proportion of knots reaching weights of 6.3 oz (180 g) or greater at the end of May was very low (e.g., 0 percent in 2003) (Dey *et al.* 2011a, p. 7; Atkinson *et al.* 2007, p. 892). These observed correlations were confirmed by the ARM modeling. The models found strong evidence that the timing of horseshoe crab spawning, not simply crab abundance, is important to red knot refueling during stopover. If spawning is delayed, even with relatively high total crab abundance, the probability that a light bird will add enough mass to become a heavy bird before departure may be lower (McGowan *et al.* 2011a, p. 12). The timing of horseshoe crab spawning is closely tied to water temperatures, and can be delayed by storms. If water temperatures or storm patterns in the mid-Atlantic region were to change significantly, the timing of spawning could shift and become temporally mismatched with shorebird migration (McGowan *et al.* 2011a, p. 16).

Horseshoe Crab Spawn—Storms and Weather

Normal variation in weather is a natural occurrence and is not considered a population-level threat to the red knot. However, adverse weather events in Delaware Bay can throw off the timing of horseshoe crab spawning relative to the red knot's stopover period. Such events have the potential to impact a majority of the red knot population, as most birds pass through Delaware Bay in spring (Brown *et al.* 2001, p. 10). Synergistic effects have also been noted among such weather events, habitat conditions, and insufficient horseshoe crab eggs (Dey *et al.* 2011a, p. 7).

The Delaware Bay stopover period occurs between the typical nor'easter (October through April) and hurricane (June through November) storm seasons (National Hurricane Center 2012; Frumhoff *et al.* 2007, p. 30). However, late nor'easters do occur in May, such as occurred in 2008 when horseshoe crab spawning was delayed and red knot feeding conditions were poor. Unusual wind and rain conditions can also affect the red knots' distribution among Delaware Bay beaches and length of stay, causing variations in their activity and habitat selection. High wind and weather events are common in May and in some years limit horseshoe crab spawning to creek mouths that are protected from rough surf (Dey *et al.* 2011, pp. 1–2; Clark *et al.* 1993, p. 702). High wave energies transport more eggs in the swash zone (the zone of wave action), but these eggs are dispersed or buried, and fewer eggs remain on the beach where they are available to shorebirds (Nordstrom *et al.* 2006a, p. 439).

High wave conditions curtail horseshoe crab spawning (Nordstrom *et al.* 2006a, p. 439). Smith *et al.* (2011a, pp. 575, 581) found that onshore winds that generate waves can delay spawning and create an asynchrony for migrating red knots. High levels of food abundance can offset some small mismatches in migration timing. Thus, increasing abundance of horseshoe crab eggs throughout the stopover period could act as a hedge against temporal mismatches between the horseshoe crab and shorebird migrations, at least in the near term. Also, select beaches with high spawning activity and capacity to retain eggs in surface sediments during episodes of high onshore winds could provide a reserve of horseshoe crab eggs during the shorebird stopover period, even in years when winds cause asynchrony between species migrations (Smith *et al.* 2011a, pp. 575, 581). Therefore, a superabundance of horseshoe crab eggs and sufficient high-quality foraging habitats can serve to partially offset asynchronies between the red knot stopover and the peak of horseshoe crab spawning.

Future frequency or intensity of storms in Delaware Bay during the stopover season may change due to climate change, but predictions about future tropical and extra-tropical storm patterns have only ''low to medium confidence'' (see supplemental document—Climate Change Background). Should storm patterns change, red knots in Delaware Bay would be more sensitive to the timing and location of coastal storms than to a change in overall frequency. Changes in the patterns of tropical or extra-tropical storms that increase the frequency or severity of these events in Delaware Bay during May would likely have dramatic effects on red knots and their habitats (Kalasz 2008, p. 41) (e.g., through direct mortality, delayed horseshoe crab spawning, delayed departure for the breeding grounds, and short-term habitat loss).

Horseshoe Crab Spawn—Water Temperatures

More certainty is associated with a correlation between the timing of horseshoe crab spawning and ocean water temperatures, based on a study by Smith and Michels (2006, pp. 487–488). Although horseshoe crabs spawn from late spring into early summer, migratory shorebirds use Delaware Bay for only a few key weeks in May and early June. In some years, horseshoe crab spawning has been early, with a high proportion of spawning activity occurring in May, and therefore better synchronized with the shorebird stopover period. In other years spawning has been late, with a low proportion of spawning in May, resulting in poor shorebird feeding conditions during the stopover period. Average daily water temperature has been statistically correlated with the percent of spawning that takes place in May, though the relationship is stronger in New Jersey than in Delaware. In the years with the lowest May spawning percentages, average water temperatures did not exceed 57.2 °F (14 °C) during May, and daily water temperatures were not consistently above 59 °F (15 °C) until late May. In the other years, daily water temperatures were consistently above 59 °F (15 °C) by mid-May (Smith and Michels 2006, pp. 487–488). After adjusting for the day of the first spring tide, the day of first spawning has been 4 days earlier for every 1.8 °F (1 °C) rise in mean daily water temperature in May (Smith *et al.* 2010b, p. 563).

Climate change does not necessarily mean a linear increase in temperatures and an amelioration of winters in the mid-Atlantic region. As the climate changes, we could see both extremes of weather from year to year, with some years being warmer and others being colder. The colder years could cause horseshoe crab spawning to be delayed past the shorebird stopover period (Kalasz 2008, p. 41). In addition, impacts to red knots from increasingly extreme precipitation events (see supplemental document—Climate Change Background) are not known, but may include temporary water temperature changes that could affect the timing of horseshoe crab spawning activity.

Conversely, average air and water temperatures are expected to continue rising. In the Northeast, annual average air temperature has increased by 2 °F (1.1 °C) since 1970, with winter temperatures rising twice as much (USGCRP 2009, p. 107). Over the next several decades, temperatures in the Northeast are projected to rise an additional 2.5 to 4 °F (1.4 to 2.2 °C) in winter and 1.5 to 3.5 °F (0.8 to 1.9 °C) in summer (USGCRP 2009, p. 107). Coastal waters are ''very likely'' to continue to warm by as much 4 to 8 °F (2.2 to 4.4 °C) in this century, both in summer and winter (USGCRP 2009, p. 151). Spring migrating red knots could benefit if warming ocean temperatures result in fewer years of delayed horseshoe crab spawning. However, earlier spawning could exacerbate the problems faced by late-arriving knots that already struggle to gain sufficient weight. Under extreme warming, the timing of peak spawning could theoretically even shift earlier than the peak red knot stopover season. Using the findings of Smith *et al.* (2010b, entire), spawning could shift nearly 9 to 18 days earlier with water temperature increases of 4 to 8 °F (2.2 to 4.4 °C).

Asynchronies—Other Spring Stopover Areas

Outside of Delaware Bay, migrating red knots feed primarily on bivalves and other mollusks. Spring migrating knots seem to follow a northward ''wave'' in prey quality (i.e., flesh-to-shell ratios); research suggests that the birds locate and time their stopovers to coincide with local peaks in prey quality, which occur during the reproductive seasons of intertidal invertebrates (van Gils *et al.* 2005a, p. 2615) when normally hard-shelled bivalves (i.e., difficult to digest especially given the birds' physiological digestive changes) are made available to knots through spat or juveniles with thinner shells. Based on a long-term

data set (1973 to 2001) from the western Wadden Sea, Philippart *et al.* (2003, p. 2171) found that population dynamics of common intertidal bivalves are strongly related to seawater temperatures, and rising seawater temperatures affect recruitment by decreasing reproductive output and advancing the timing of bivalve spawning in spring. Thus, red knots are vulnerable to changes in the reproductive timing and the geographic ranges of their prey, such as could be precipitated by climate change (see examples of blue mussel spat in Virginia and horseshoe crab eggs in Delaware Bay discussed above).

Based on observations from 1998 to 2003, González *et al.* (2006, p. 109) found that an early March departure date of red knots from San Antonio Oeste, Argentina, generally corresponded to an early arrival date in Delaware Bay. The early migrating birds exhibited a higher return rate in later years, suggesting higher survival rates for red knots that arrive earlier in Delaware Bay. These findings are consistent with observation from Delaware Bay that an increasing number of late-arriving knots, along with reduced horseshoe crab egg availability, were both tied to lower survival rates observed in the early 2000s (Niles *et al.* 2008, p. 2; Baker *et al.* 2004, p. 878).

At Fracasso Beach on Península Valdés, Argentina, Hernández (2009, p. 208) found a significant correlation during March and April between the presence of shorebirds and the biomass of the clam *Darina solenoids,* suggesting that the occurrence of shorebirds at this site must depend largely on the available food supply. Analysis of weekly counts at Fracasso Beach during March and April from 1994 to 2005 showed some trends in the phenology of the migration of red knots. Generally, from 1994 to 1999, red knots occurred during both March and April, but in 2000 practically none arrived in March. Moreover, in 2004 and 2005, the first red knots were not recorded until May. Hernández (2009, p. 208) concluded that this delayed stopover at Península Valdés was reflected in similar changes at other sites along the West Atlantic Flyway (e.g., San Antonio Oeste, Delaware Bay), but the cause is unknown.

After 2000, increasing proportions of birds arrived late and with low weights at stopover sites in South and North America, suggesting that red knots face additional problems somewhere en route. Indeed, observations from a key Tierra del Fuego wintering area (Río Grande) in 1995, 2000, and 2008 indicated that wintering conditions at this site had deteriorated, as energy intake rates dropped sharply due to smaller prey sizes and human disturbance (Escudero *et al.* 2012, p. 362). Escudero *et al.* (2012, p. 362) suggested declining foraging conditions at Río Grande might offer at least a partial explanation for red knots after 2000 arriving late, and with low weights at stopover sites in South and North America.

We have no information to explain why the spring migration of some red knots wintering in Argentina and Chile apparently shifted later in the mid-2000s, exacerbating the population effects from reduced horseshoe crab egg supplies in Delaware Bay. Escudero *et al.* (2012, p. 362) suggested that problems in one wintering area may be a factor, but the full explanation is unknown. Regardless of the cause, if the trend of later spring migrations continues, it may exacerbate emerging asynchronies with mollusk prey at other stopover areas, since the reproductive window of bivalves and other species is likely to shift earlier in response to warming water temperatures (Philippart *et al.* 2003, p. 2171).

However, red knots may show at least some adaptive capacity in their migration strategies. For example, from 2000 to 2003, a study of a Tierra del Fuego wintering area (Río Grande) and the first major South American stopover site (San Antonio Oeste) found that red knots took a direct northward flight between the two areas in 2000 and 2001. However, in 2002, birds stopped to feed in intermediate wetlands, leaving Río Grande earlier but arriving later in San Antonio Oeste. In 2003, both early and late patterns were observed. Red knots arriving early at San Antonio Oeste also arrived significantly earlier in Delaware Bay (González *et al. in* International Wader Study Group 2003 p. 18). These findings, and those of González *et al.* (2006, p. 115), show some diversity and flexibility of the red knot migration strategies. These characteristics may be an advantage in helping red knots adapt to temporal changes in resource availability along the flyway.

Asynchronies—Fall Migration

Preliminary results of efforts to track red knot migration routes using geolocators found that two of three birds likely detoured from normal migration paths to avoid adverse weather during the fall migration (Niles *et al.* 2010a, p. 129). These birds travelled an extra 640 to 870 mi (1,030 to 1,400 km) to avoid storms. The extra flying represents substantial additional energy expenditure, which on some occasions may lead to mortality (Niles *et al.* 2010a, p. 129). The timing of fall migration coincides with hurricane season. As discussed in the supplemental document ''Climate Change Background,'' increasing hurricane intensity is ongoing and expected to continue. Hurricane frequency is not expected to increase globally in the future, but may have increased in the North Atlantic over recent decades. However, predictions about changing storm patterns are associated with ''low'' to ''medium'' confidence levels (IPCC 2012, p. 13). Therefore, we are uncertain how or to what extent red knots will be affected by changing storm patterns during fall migration.

Red knots may also face asynchronies with the periods of peak prey abundance in fall, similar to those discussed above for the spring migration. Studying *Calidris canutus islandica* in the Dutch Wadden Sea, van Gils *et al.* (2005b, pp. 126–127) found that gizzards are smallest just following the breeding season because while in the Arctic the birds feed on soft-bodied arthropods. Upon arrival at the fall staging area, gizzards enlarge to their normal nonbreeding size. During their 'small-gizzard' phase the birds rely heavily on high-quality prey (e.g., high flesh-to-shell ratios), which are most abundant early in the stopover period when most birds arrive. Birds that arrive late at the staging area might struggle to keep their energy budgets balanced, let alone refuel to gain mass and continue on to the wintering grounds. This work by van Gils *et al.* (2005b, pp. 126–127) shows the importance of timing to food availability during fall migration in *C. canutus.* The timing of fall migration in shorebirds including red knots is also important to avoid the peak migration of avian predators (see Factor C above) (L. Niles pers. comm. November 19, 2012; Meltofte *et al.* 2007, p. 27; Lank *et al.* 2003, p. 303).

Asynchronies—Breeding Grounds

As explained previously, the northbound red knot migration is time-constricted. Birds must arrive on arctic breeding grounds at the right time and with sufficient remaining energy and nutrient stores. In fitness terms, everything else in the annual cycle may be subservient to arrival timing. Knots need to reach the Arctic just as snow is melting, lay their eggs, and hatch them in time for the insect emergence (Piersma *et al.* 2005, p. 270; Clark *in* Farrell and Martin 1997, p. 23). Insects are the primary food source for red knot chicks, and for adults during the breeding season. Modeling results from the ARM suggest that indices of arctic conditions are predictors of the annual

survival probability of adult red knots, and have stronger effects on survival than departure weights from Delaware Bay (McGowan *et al.* 2011a, p. 13).

Adverse weather in the Arctic can cause years with little to no productivity for shorebird species. Conditions for breeding are highly variable among sites and regions. The factors most affected by annual variation in weather include whether to breed upon arrival on the breeding grounds, the timing of egg-laying, and the chick growth period (Meltofte *et al.* 2007, p. 7). In much of the Arctic, initiation dates of clutches (the group of eggs laid by one female) are highly correlated with snowmelt dates. In regions and years where extensive snowmelt occurs before or soon after shorebird arrival, the decision to breed and clutch initiation dates both appear to be a function of food availability for females. Once incubation is initiated, adult shorebirds appear fairly resilient to variations in temperature, with nest abandonment generally limited to cases of severe weather when new snow covers the ground. Feeding conditions for chicks are highly influenced by weather, affecting juvenile production (Meltofte *et al.* 2007, p. 7). For a number of shorebird species, productivity has been correlated with climate variables known to affect nesting (in June) or brood-rearing (in July) success in a positive (temperature) or negative (snow depth, wind, precipitation) manner (Meltofte *et al.* 2007, p. 25).

Anticipated climate changes are expected to be particularly pronounced in the Arctic, and extensive and dramatic changes in snow and weather regimes are predicted for most tundra areas (Meltofte *et al.* 2007, p. 11) where red knots breed. (See Factor A—Breeding Habitat Loss from Warming Arctic Conditions, above, for recent rates and predictions of arctic warming and the eco-regional classification of the red knot's current breeding range.) However, forecasting the effects of changing arctic weather patterns on shorebirds is associated with high uncertainty. Under late 20th century climate conditions, studies have found that shorebird reproductive success is closely tied to weather and temperature during the breeding season. However, these findings may tell us little about the effects of climate variables on reproductive rates in the future, over a longer time scale, and with a much larger amplitude of climate change. Although arctic shorebirds are resilient to great interannual variability, we do not know to what extent the birds are able to adapt to the long-term and fast-changing climatic conditions that are predicted to occur in coming decades (Meltofte *et al.* 2007, p. 34).

Breeding Grounds—Insect Prey

Schekkerman *et al.* (2003, p. 340) found that growth rates of *Calidris canutus* chicks were strongly correlated with weather-induced and seasonal variation in the availability of invertebrate prey within arctic nesting habitats, underscoring the importance of timing of reproduction so that chicks can make full use of the summer peak in insect abundance. During studies of *C. canutus islandica* at a nesting area in eastern Canada, both adults and juveniles were found to put on large amounts of fat prior to migration, suggesting that they make a long-haul flight out of the Arctic to the first fall stopover site. The period of peak arthropod availability is not only during the peak chick rearing season, but also when many adult shorebirds (principally females that have abandoned broods to the care of the male) are actively accumulating fat and other body stores before departure from the Arctic (Meltofte *et al.* 2007, p. 24).

Tulp and Schekkerman (2008, p. 48) developed models of the relationship between weather and arthropod (i.e., insect) abundance based on 4 recent years, then used the models to project insect abundance backwards in time (''hindcast'') based on weather records over a 30-year period. The hindcasted dates of peak arthropod abundance advanced during the study period, occurring 7 days earlier in 2003 than in 1973. The timing of the period during which shorebirds have a reasonable probability of finding enough food to grow has also changed, with the highest probabilities now occurring at earlier dates than in the past. At the same time, the overall length of the period with probabilities of finding enough food has remained unchanged (e.g., same number of days of availability, only sooner). The result is an advancement of the optimal breeding date for breeding birds. To take advantage of the new optimal breeding time, arctic shorebirds must advance the start of breeding, and this change could affect the entire migration schedule (Tulp and Schekkerman 2008, p. 48). If such a change is beyond the adaptive capacity of red knots, this species will likely face increasing asynchronies with its insect prey during the breeding season, thereby affecting reproductive output. The potential uncoupling of phenology of food resources and breeding events is a major concern for the red knot (COSEWIC 2007, p. 40).

Even when insect abundance is high, energy budgets of breeding red knots may be tight due to high energy expenditure levels. During the incubation phase in the High Arctic, tundra-breeding shorebirds appear to incur among the highest daily energy expenditure levels of any time of the year (Piersma *et al.* 2003b, p. 356). The rates of energy expenditure measured in this region are among the highest reported in the literature, reaching inferred ceilings of sustainable energy turnover rates (Piersma *et al.* 2003b, p. 356). If decreased prey abundance requires birds to spend more time foraging, adverse effects to the energy budget would be further exacerbated, possibly impacting survival rates because red knots foraging away from the nest on open tundra expend almost twice as much energy as during nest incubation (Piersma *et al.* 2003b, p. 356).

Although not yet documented for red knots, the links between temperature, prey, and reproductive success have been established in other northern-nesting shorebirds. In one sub-Arctic-breeding shorebird species, Pearce-Higgens *et al.* (2010, p. 12) linked population changes to previous August temperatures through the effect of temperature on the abundance of the species' insect prey. Predictions of annual productivity, based on temperature-mediated reductions in prey abundance, closely match observed bird population trends, and forecasted warming indicates significant likelihood of northward range contraction (e.g., local extinction) (Pearce-Higgens *et al.* 2010, p. 12).

The best available scientific data indicate that red knots will likely be negatively affected by increased asynchronies between the breeding season and the window of optimal insect abundance. However, we are uncertain how or to what extent red knots may be able to adapt their annual cycle, geographic range, or breeding strategy to cope with these predicted ecosystem changes in the Arctic.

Breeding Grounds—Snowmelt

Field studies from several breeding sites have shown the sensitivity of red knots to the date of snow melt. At 4 sites in the eastern Canadian Arctic, Smith *et al.* (2010a, p. 292) monitored the arrival of 12 species (including red knot) and found 821 nests over 11 years. Weather was highly variable over the course of the study, and the date of 50 percent snow cover varied by up to 3 weeks among years. In contrast, timing of bird arrival varied by 1 week or less at the sites and was not well predicted by local conditions such as temperature, wind, or snow melt. Timing of breeding was related to the date of 50 percent

snow melt, with later snow melt resulting in delayed breeding (Smith *et al.* 2010a, p. 292). These findings suggest that the suite of cues that control the timing of shorebird arrival in the Arctic are not equipped to adjust for annual weather variations that take place on the breeding grounds.

In 1999, Morrison *et al.* (2005, p. 455) found that post-arrival body masses of *Calidris canutus islandica* at a breeding site on Ellesmere Island, Canada, were lower than the long-term mean. Many shorebirds were unable to breed, or bred late, due to extensive early-season (June) snow cover. The need to use stored energy reserves for survival or supplementing lower than usual local food resources in that year may have contributed to delayed or failed breeding (Morrison *et al.* 2005, p. 455). At a site on Southampton Island in Canada, late snowmelt and adverse weather conditions, combined with predation, contributed to poor productivity in 2004, and may have also significantly increased mortality of adult red knots. Canadian researchers reported that most Arctic-breeding birds failed to breed successfully in 2004 (Niles *et al.* 2005, p. 4).

Trends toward earlier snowmelt dates have been documented in North America in recent years (IPCC 2007b, p. 891). Earlier snowmelts in the Arctic from 2020 to 2080 are ''very likely'' (ACIA 2005, p. 470). As years of late snowmelt have typically had an adverse effect on shorebird breeding, reduced frequency of late-melt years may have a short-term benefit to red knots. Warming trends may benefit arctic shorebirds in the short term by increasing both survival and productivity (Meltofte *et al.* 2007, p. 7). However, it is unknown how red knots would be affected if snowmelts become substantially earlier than the start of the breeding season (see Ims and Fuglei 2005 for consideration of the complex ways tundra ecosystems may respond to climate change).

Breeding Grounds—Snow Depth

Modeling for the ARM suggested that higher snow depth in the breeding grounds on June 10 (about 7 days after peak arrival of red knots) has a strong positive influence on red knot survival probability, regardless of the birds' weights upon departure from Delaware Bay (McGowan *et al.* 2011a, p. 13). In contrast, several studies to date have found a negative effect of snow cover on breeding success (McGowan *et al.* 2011a, p. 13; Meltofte *et al.* 2007, p. 25). These seemingly contradictory findings have many possible explanations: Birds may skip breeding in years with heavy snow after arriving in the Arctic and survive at higher rates without the physiological stresses of breeding; snow may determine annual moisture and water in the environment and thereby drive the production of insect prey; red knot survival may be tied to lemming cycles, which are in turn closely linked to snow depth; or the selected weather stations may not be representative of mean snow depth throughout the red knot's breeding range (McGowan *et al.* 2011a, p. 13). Regardless of the explanation, if this strong linkage between snow depth and survival proves correct, arctic warming trends that reduce snow depths would adversely affect red knot survival rates. Such an impact could negate the potential benefits of increased productivity from earlier snowmelt.

Asynchronies—Summary

The red knot's life history strategy makes this species inherently vulnerable to mismatches in timing between its annual cycle and those periods of optimal food and weather conditions upon which it depends. For unknown reasons, more red knots arrived late in Delaware Bay in the early 2000s, which is generally accepted as a key causative factor (along with reduced supplies of horseshoe crab eggs) behind red knot population declines that were observed over this same timeframe. Thus, the red knot's sensitivity to timing asynchronies has been demonstrated through a population-level response. Both adequate supplies of horseshoe crab eggs and high-quality foraging habitat in Delaware Bay can serve to partially mitigate minor asynchronies at this key stopover site. However, the factors that caused delays in the spring migrations of red knots from Argentina and Chile are still unknown, and we have no information to indicate if this delay will reverse, persist, or intensify.

Superimposed on this existing threat of late arrivals in Delaware Bay are new threats of asynchronies emerging due to climate change. Climate change is likely to affect the reproductive timing of horseshoe crabs in Delaware Bay, mollusk prey species at other stopover sites, or both, possibly pushing the peak seasonal availability of food outside of the windows when red knots rely on them. In addition, both field studies and modeling have shown strong links between the red knot's reproductive output and conditions in the Arctic including insect abundance and snow cover. Climate change may also cause shifts in the period of optimal arctic conditions relative to the time period when red knots currently breed.

The red knot's adaptive capacity to deal with numerous changes in the timing of resource availability across its geographic range is largely unknown. A few examples suggest some flexibility in migration strategies. However, available information suggests that the timing of the red knot's annual cycle is controlled at least partly by celestial and endogenous cues, while the reproductive seasons of prey species, including horseshoe crabs and mollusks, are largely driven by environmental cues such as water temperature. These differences between the timing cues of red knots and their prey suggest limitations on the adaptive capacity of red knots to deal with numerous changes in the timing of resource availability across their geographic range.

Based on the combination of documented past impacts and a spectrum of ongoing and emerging threats, we conclude that asynchronies (mismatches between the timing of the red knot's annual cycles and the periods of favorable food and weather upon which it depends) are likely to cause deleterious subspecies-level effects.

Factor E—Human Disturbance

In some wintering and stopover areas, red knots and recreational users (e.g., pedestrians, ORVs, dog walkers, boaters) are concentrated on the same beaches (Niles *et al.* 2008, pp. 105–107; Tarr 2008, p. 134). Recreational activities affect red knots both directly and indirectly. These activities can cause habitat damage (Schlacher and Thompson 2008, p. 234; Anders and Leatherman 1987, p. 183), cause shorebirds to abandon otherwise preferred habitats, negatively affect the birds' energy balances, and reduce the amount of available prey (see Reduced Food Availability, above). Effects to red knots from vehicle and pedestrian disturbance can also occur during construction of shoreline stabilization projects including beach nourishment. Red knots can also be disturbed by motorized and nonmotorized boats, fishing, kite surfing, aircraft, and research activities (K. Kalasz pers. comm. November 17, 2011; Niles *et al.* 2008, p. 106; Peters and Otis, 2007, p. 196; Harrington 2005b, pp. 14–15; 19–21; Meyer *et al.* 1999, p. 17; Burger 1986, p. 124) and by beach raking (also called grooming or cleaning, see Factor A above). In Delaware Bay, red knots could also potentially be disturbed by hand-harvest of horseshoe crabs (see Reduced Food Availability, above) during the spring migration stopover period, but under the current management of this fishery State waters

from New Jersey to coastal Virginia are closed to horseshoe crab harvest and landing from January 1 to June 7 each year (ASMFC 2012a, p. 4); thus, disturbance from horseshoe crab harvest is no longer occurring. Active management can be effective at reducing and minimizing the adverse effects of recreational disturbance (Burger and Niles in press, entire; Forys 2011, entire; Burger *et al.* 2004, entire), but such management is not occurring throughout the red knot's range.

Disturbance—Timing and Extent

Although the timing, frequency, and duration of human and dog presence throughout the red knot's U.S. range are not fully known, periods of recreational use tend to coincide with the knot's spring and fall migration periods (WHSRN 2012; Maddock *et al.* 2009, entire; Mizrahi 2002, p. 2; Johnson and Baldassarre 1988, p. 220; Burger 1986, p. 124). Burger (1986, p. 128) found that red knots and other shorebirds at two sites in New Jersey reacted more strongly to disturbance (i.e., flew away from the beach where they were foraging or roosting) during peak migration periods (May and August) than in other months.

Human disturbance within otherwise suitable red knot migration and winter foraging or roosting areas was reported by biologists as negatively affecting red knots in Massachusetts, Virginia, North Carolina, South Carolina, Georgia, and Florida (USFWS 2011b, p. 29). Some disturbance issues also remain in New Jersey (both Delaware Bay and the Atlantic coast) despite ongoing, and largely successful, management efforts since 2003 (NJDEP 2013; USFWS 2011b, p. 29; Niles *et al.* 2008, pp. 105–106). Delaware also has a management program in place to limit disturbance (Kalasz 2008, pp. 36–38). In Florida, the most immediate and tangible threat to migrating and wintering red knots is apparently chronic disturbance (Niles *et al.* 2008, p. 106; Niles *et al.* 2006, entire), which may be affecting the ability of birds to maintain adequate weights in some areas (Niles 2009, p. 8).

In many areas, migration and wintering habitat for the piping plover overlaps considerably with red knot habitats. Because the two species use similar habitats in the Southeast, and both are documented to be affected by disturbance, we can infer the extent of potential human disturbance to red knots from piping plover data in this region. Based on a preliminary review of disturbance in piping plover wintering habitats from North Carolina to Texas, pedestrians and dogs are widespread on beaches in this region (USFWS 2009, p. 46). LeDee *et al.* (2010, pp. 343–344) surveyed land managers of designated wintering piping plover critical habitat sites across seven southern States and documented the extent of beach access and recreation. All but 4 of the 43 reporting sites owned or managed by Federal, State, and local governmental agencies or by nongovernmental organizations allowed public beach access year-round (88 percent of the sites). At the sites allowing public access, 62 percent of site managers reported more than 10,000 visitors from September to March, and 31 percent reported more than 100,000 visitors in this period. However, more than 80 percent of the sites allowing public access did not allow vehicles on the beach, and half did not allow dogs during the winter season (as cited in USFWS 2012a, p. 35).

Disturbance of red knots has also been reported from Canada. In the Province of Quebec, specifically on the Magdalen Islands, feeding and resting red knots are frequently disturbed by human activities such as clam harvesting and farming, kite surfing, and seal rookery observation (USFWS 2011b, p. 29). With the increasing popularity of ecotourism, more visitors from around the world come to the shores of the Bay of Fundy in Canada, but existing infrastructure is insufficient to minimize disturbance to roosting shorebirds during high-tide periods. In addition, access to the shoreline is increasing due to ORV use (WHSRN 2012).

Areas of South America also have documented red knot disturbance. In Tierra del Fuego, wintering red knots are often disturbed around Río Grande City, Argentina, by ORVs, motorcycles, walkers, runners, fishermen, and dogs (Niles *et al.* 2008, p. 107; COSEWIC 2007, p. 36). The City of Río Grande has recently grown extensively towards the sea and river margins. Escudero *et al.* (2012, p. 358) reported that pedestrians, ORVs, and unleashed dogs on the gravel beach during high tide caused red knots to fly from one spot to another or to move farther away from feeding areas. During outgoing tides, as prime intertidal foraging habitats became exposed, red knots were disturbed and were flushed continuously by walkers, ORVs, and dogs (Escudero *et al.* 2012, p. 358).

In Patagonian Argentina, disturbance of migrating red knots has been reported from shorebird reserve areas at Río Gallegos, Península Valdés, Bahía San Antonio (San Antonio Oeste), and Bahía Samborombón (WHSRN 2012; Niles *et al.* 2008, p. 107). Coastal urban growth at Río Gallegos has increased disturbances to shorebirds, especially during high tide when they gather in a limited number of spots very close to shore. Dogs and people frequently interrupt the birds' resting and feeding activities. Various recreational activities, including boating, sport fishing, hiking, and dog walking, take place at urban sites near the coast and on the periphery of the city. These seasonal activities are concentrated in the austral spring and summer (WHSRN 2012), when red knots are present.

Both shorebirds and people are attracted to the pristine beaches in Bahía San Antonio, Argentina. For example, Las Grutas Beach draws 300,000 tourists every summer, a number that has increased 20 percent per year over the past decade, and the timing of which corresponds with the red knot's wintering use. New access points, buildings, and tourist amusement facilities are being constructed along the beach. Lack of planning for this rapid expansion has resulted in uncontrolled tourist disturbance of crucial roosting and feeding areas for migratory shorebirds, including red knots (WHSRN 2012).

Management efforts have begun to mitigate disturbance at some South American sites. Campaigns to build alternative ORV trails away from shorebird areas, and to raise public awareness, have helped reduce disturbance in Tierra del Fuego, Río Gallegos, and Bahía San Antonio (American Bird Conservancy 2012a, p. 5). The impact of human disturbance was successfully controlled at roosting and feeding sites at Los Alamos near Las Grutas (Bahía San Antonio) by ''environmental rangers'' charged with protecting shorebird roosting sites and providing environmental education (WHSRN 2012). However, other key shorebird sites do not yet have any protection.

Disturbance—Precluded Use of Preferred Habitats

Where shorebirds are habitually disturbed, they may be pushed out of otherwise preferred roosting and foraging habitats (Colwell *et al.* 2003, p. 492; Lafferty 2001a, p. 322; Luís *et al.* 2001, p. 72; Burton *et al.* 1996, pp. 193, 197–200; Burger *et al.* 1995, p. 62). Roosting knots are particularly vulnerable to disturbance because birds tend to concentrate in a few small areas during high tides, and availability of suitable roosting habitats is already constrained by predation pressures and energetic costs such as traveling between roosting and foraging areas (L. Niles pers. comm. November 19, 2012; Rogers *et al.* 2006a, p. 563; Colwell *et al.* 2003, p. 491; Rogers 2003, p. 74).

Exclusion of shorebirds from preferred habitats due to disturbance has been noted throughout the red knot's nonbreeding range. For example, Pfister *et al.* (1992, p. 115) found sharper declines in red knot abundance at a disturbed site in Massachusetts than at comparable but less disturbed areas. On the Atlantic coast of New Jersey, findings by Mizrahi (2002, p. 2) generally suggest a negative relationship between human and shorebird densities; specifically, sites that allowed swimming had the greatest densities of people and the fewest shorebirds. At two sites on the Atlantic coast of New Jersey, Burger and Niles (in press) found that disturbed shorebird flocks often did not return to the same place or even general location along the beach once they were disturbed, with return rates at one site of only eight percent for monospecific red knot flocks. In Delaware Bay, Karpanty *et al.* (2006, p. 1707) found that potential disturbance reduced the probability of finding red knots on a given beach, although the effect of disturbance was secondary to the influence of prey resources. In Florida, sanderlings seemed to concentrate where there were the fewest people (Burger and Gochfeld 1991, p. 263). From 1979 to 2007, the mean abundance of red knots on Mustang Island, Texas decreased 54 percent, while the mean number of people on the beach increased fivefold (Foster *et al.* 2009, p. 1079). In 2008, Escudero *et al.* (2012, p. 358) found that human disturbance pushed red knots off prime foraging areas near Río Grande in Argentinean Tierra del Fuego, and that disturbance was the main factor affecting roost site selection.

Although not specific to red knot, Forgues (2010, p. ii) found the abundance of shorebirds declined with increased ORV frequency, as did the number and size of roosts. Study sites with high ORV activity and relatively high invertebrate abundance suggest that shorebirds may be excluded from prime food sources due to disturbance from ORV activity itself (Forgues 2010, p. 7). Tarr (2008, p. 133) found that disturbance from ORVs decreased shorebird abundance and altered shorebird habitat use. In experimental plots, shorebirds decreased their use of the wet sand microhabitat and increased their use of the swash zone in response to vehicle disturbance (Tarr 2008, p. 144).

Disturbance—Effects to Energy Budgets

Disturbance of shorebirds can cause behavioral changes resulting in less time roosting or foraging, shifts in feeding times, decreased food intake, and more time and energy spent in alert postures or fleeing from disturbances (Defeo *et al.* 2009, p. 3; Tarr 2008, pp. 12, 134; Burger *et al.* 2007; p. 1164; Thomas *et al.* 2003, p. 67; Lafferty 2001a, p. 315; Lafferty 2001b, p. 1949; Elliott and Teas 1996, pp. 6–9; Burger 1994, p. 695; Burger 1991, p. 39; Johnson and Baldassarre 1988, p. 220). By reducing time spent foraging and increasing energy spent fleeing, disturbance may hinder red knots' ability to recuperate from migratory flights, maintain adequate weights, or build fat reserves for the next phase of the annual cycle (Clark *in* Farrell and Martin 1997, p. 24; Burger *et al.* 1995, p. 62). In addition, stress such as frequent disturbance can cause red knots to stop molting before the process is complete (Niles 2010b), which could potentially interfere with the birds' completion of the next phase of their annual cycle.

Although population-level impacts cannot be concluded from species' differing behavioral responses to disturbance (Stillman *et al.* 2007; p. 73; Gill *et al.* 2001, p. 265), behavior-based models can be used to relate the number and magnitude of human disturbances to impacts on the fitness of individual birds (Goss-Custard *et al.* 2006, p. 88; West *et al.* 2002, p. 319). When the time and energy costs arising from disturbance were included, modeling by West *et al.* (2002, p. 319) showed that disturbance could be more damaging than permanent habitat loss. Modeling by Goss-Custard *et al.* (2006, p. 88) was used to establish critical thresholds for the frequency with which shorebirds can be disturbed before they die of starvation. Birds can tolerate more disturbance before their fitness levels are reduced when feeding conditions are favorable (e.g., abundant prey, mild weather) (Niles *et al.* 2008, p. 105; Goss-Custard *et al.* 2006, p. 88).

At one California beach, Lafferty (2001b, p. 1949) found that more than 70 percent of birds flew when disturbed, and species that forage lower on the beach were disproportionally affected by disturbance because contact with people was more frequent. This finding would apply to red knots, as they forage in the intertidal zone. At two Atlantic coast sites in New Jersey, Burger and Niles (in press) found that 70 percent of shorebird flocks with red knots flew when disturbed, whether the flocks were monospecific or contained other species as well. In two New Jersey bays, Burger (1986, p. 125) found that 70 percent of shorebirds, including red knots, flew when disturbed, including 25 (Raritan Bay) to 48 (Delaware Bay) percent that flew away and did not return. Birds in smaller flocks tended to be more easily disturbed than those in larger flocks. Explanatory variables for differences in response rate included date, duration of disturbance, distance between the disturbance and the birds, and the number of people involved in the disturbance (Burger 1986, pp. 126–127). On some Delaware Bay beaches, the percent of shorebirds that flew away and did not return in response to disturbance increased between 1982 and 2002 (Burger *et al.* 2004, p. 286).

In Florida, sanderlings ran or flew to new spots when people moved rapidly toward them, or when large groups moved along the beach no matter how slow the movement. The number of people on the beach contributed significantly to explaining variations in the amount of time sanderlings spent feeding, and active feeding time decreased from 1986 to 1990 (Burger and Gochfeld 1991, p. 263). Along with reduced size of prey items, disturbance was a key factor explaining sharp declines in red knot food intake rates at Río Grande, Argentina, on Tierra del Fuego (Escudero *et al.* 2012, p. 362). Comparing conditions in 2008 with earlier studies, total red knot feeding time was 0.5 hour shorter due to continuous disturbance and flushing of the birds by people, dogs, and ORVs during prime feeding time just after high tide (Escudero *et al.* 2012, pp. 358, 362). Studying another *Calidris canutus* subspecies in Australia, Rogers *et al.* (2006b, p. 233) found that energy expenditure over a tidal cycle was sensitive to the amount of disturbance, and a relatively small increase in disturbance can result in a substantial increase in energy expenditure. Shorebirds may be able to compensate for these costs to some extent by extending their food intake, but only to a degree, and such compensation is dependent upon the availability of adequate food resources. The energetic costs of disturbance are greatest for heavy birds, such as just before departure on a migratory flight (Rogers *et al.* 2006b, p. 233).

Both modeling (West *et al.* 2002, p. 319) and empirical studies (Burger 1986, pp. 126–127) suggest that numerous small disturbances are generally more costly than fewer, larger disturbances. Burger *et al.* (2007, p. 1164) found that repeated disturbances to red knots and other shorebirds may have the effect of increasing interference competition for foraging space by giving a competitive advantage to gull species, which return to foraging more quickly than shorebirds following a response to vehicles, people, or dogs.

Tarr (2008, p. 133) found that vehicle disturbance decreased the amount of

time that sanderlings spent roosting and resting. Forgues 2010 (pp. 39, 55) found that shorebirds spent significantly less time foraging and more time resting at sites with ORVs, and suggested that the increased amount of time spent resting may be a compensation method for energy lost from decreased foraging.

Shorebirds are more likely to be flushed by dogs than by people (Thomas *et al.* 2003, p. 67; Lafferty 2001a, p. 318; Lord *et al.* 2001, p. 233), and birds react to dogs from greater distances than to people (Lafferty 2001a, p. 319; Lafferty 2001b, pp. 1950, 1956). Pedestrians walking with dogs often go through flocks of foraging and roosting shorebirds, and unleashed dogs often chase the birds and can kill them (Lafferty 2001b, p. 1955; Burger 1986, p. 128). Burger *et al.* (2007, p. 1162) found that foraging shorebirds in migratory habitat do not return to the beach following a disturbance by a dog, and Burger *et al.* 2004 (pp. 286–287) found that disturbance by dogs is increasing in Delaware Bay even as management efforts have been successful at reducing other types of disturbances.

Disturbance—Summary

Red knots are exposed to disturbance from recreational and other human activities throughout their nonbreeding range. Excessive disturbance has been shown to preclude shorebird use of otherwise preferred habitats and can impact energy budgets. Both of these effects are likely to exacerbate other threats to the red knot, such as habitat loss, reduced food availability, asynchronies in the annual cycle, and competition with gulls (see Cumulative Effects below).

Factor E—Competition With Gulls

Gulls foraging on the beaches of Delaware Bay during the red knot's spring stopover period may directly or indirectly compete with shorebirds for horseshoe crab eggs. Botton (1984, p. 209) noted that, in addition to shorebirds, large populations of laughing gulls (*Larus atricilla*) were predominant on New Jersey's horseshoe crab spawning beaches along Delaware Bay. Gull breeding colonies in Delaware are not located as close to the bayshore beaches as in New Jersey. However, immature, large-bodied gulls such as greater black-backed gull and herring gull, as well as some laughing gulls, most likely from New Jersey breeding colonies, do congregate on the Delaware shore during the spring, especially at Mispillion Harbor (Niles *et al.* 2008, p. 107).

Aerial surveys of breeding gull species on the Atlantic coast of New Jersey from 1976 to 2007 show that herring and greater black-backed gull populations were relatively stable. Greater black-backed gulls showed a slight increase in 2001 that had subsided by 2004. Laughing gull populations grew steadily from 1976 (fewer than 20,000 birds) to 1989 (nearly 60,000 birds). Following a dip in 1995, laughing gull numbers spiked in 2001 to nearly 80,000. From 2004 to 2007, laughing gull numbers returned to approximately the same levels that predominated in the 1980s (50,000 to 60,000 birds) (Dey *et al.* 2011b, p. 24).

From 1992 to 2002, the number of gulls recorded in single-day counts on Delaware Bay beaches in New Jersey ranged from 10,000 to 23,000 (Niles *et al.* 2008, p. 107). To allow for comparisons, gull counts on Delaware Bay were performed in spring 1990 to 1992 and again in 2002 using the same methodology (Sutton and Dowdell 2002, p. 3). Despite the increasing breeding populations documented by the aerial survey of New Jersey's nearby Atlantic coast, gull numbers on Delaware Bay beaches were significantly lower in 2002 than they were between 1990 and 1992. The highest laughing gull count in 2002 was only a third of the highest count of the 1990 to 1992 period. When comparing the average of the four 1990s counts to the average of the four 2002 counts, laughing gulls using Delaware Bay beaches declined by 61 percent decline (Sutton and Dowdell 2002, p. 5). Decreased gull usage of Delaware Bay, despite growing regional gull populations, may suggest that gulls were responding to reduced availably of horseshoe crab eggs by 2002 (Sutton and Dowdell 2002, p. 6).

Burger *et al.* (1979, p. 462) found that intraspecific (between members of the same species) aggressive interactions of shorebirds were more common than interspecific (between members of different species) interactions. Negative interactions between red knots and laughing gulls that resulted in disruption of knot behavior were no more prevalent than interactions with other shorebird species. However, larger-bodied species (like gulls) tended to successfully defend areas against smaller species. Total aggressive interactions increased as the density of birds increased in favored habitats, which indicated some competition for food resources (Burger *et al.* 1979, p. 462).

Sullivan (1986, pp. 376–377) found that aggression in ruddy turnstones increased as experimentally manipulated food resources (horseshoe crab eggs) changed from an even distribution to a more patchy distribution. Horseshoe crab eggs are typically patchy on Delaware Bay beaches, as evidenced by the very high variability of egg densities within and between sites (ASMFC 2012d, p. 11). The ruddy turnstones' decisions to defend food patches were likely driven by the energetic cost of locating new patches (Sullivan 1986, pp. 376–377), suggesting that aggression may increase as food availability decreases. Botton *et al.* (1994, p. 609) noted that flocks of shorebirds appeared to be deterred from landing on beaches when large flocks of gulls were present. When dense, mixed flocks of gulls and shorebirds were observed, gulls monopolized the waterline, limiting shorebirds to drier sand farther up the beach (Botton *et al.* 1994, p. 609).

Following up on earlier studies, Burger (undated, p. 9) studied foraging behavior in shorebirds and gulls on the New Jersey side of Delaware Bay in spring 2002 to determine if interference competition existed between shorebirds and gulls. For red knots, the time devoted to foraging when gulls were present was significantly less than when a nearest neighbor was any shorebird. Red knots spent more time being vigilant when their nearest neighbors were gulls rather than other shorebirds. Similarly, red knots engaged in more aggression when gulls were nearest neighbors, although they usually lost these encounters (Burger undated, p. 10; USFWS 2003, p. 42). The increased vigilance of red knots when feeding near gulls comes at the detriment of time spent feeding (Niles *et al.* 2008, p. 107), and red knot foraging efficiency is adversely affected by the mere presence of gulls. Hernandez (2005, p. 80) found that the foraging efficiency of knots feeding on horseshoe crab eggs decreased by as much as 40 percent when feeding close to a gull. As described under Background—Species Information—Migration and Wintering Food, above, red knots are present in Delaware Bay for a short time to replenish energy to complete migration to their arctic breeding grounds. Excessive competition from gulls that decreases energy intake rates would affect the ability of red knots to gain sufficient weight for the final leg of migration.

Despite the observed competitive behaviors between gulls and red knots, Karpanty *et al.* (2011, p. 992) did not observe red knots to be excluded from foraging by aggressive interactions with other red knots, other shorebirds, or gull species in experimental sections of beach in 2004 and 2005. These authors did observe knots foraging in plots with high egg densities and knots foraging

throughout the tidal cycle in all microhabitats. Thus, red knots did not appear to be substantially affected by interspecific or intraspecific interference competition during this study.

Burger *et al.* (2007, p. 1162) found that gulls are more tolerant of human disturbance than shorebirds are. When disturbed by humans, gull numbers returned to pre-disturbance levels within 5 minutes. Even after 10 minutes, shorebird numbers failed to reach predisturbance levels. Repeated disturbances to red knots and other shorebirds may have the effect of increasing interference competition for foraging space by giving a competitive advantage to gull species, which return to foraging more quickly than shorebirds following a flight response to vehicles, people, or dogs (Burger *et al.* 2007, p. 1164). The size and aggression of gulls, coupled with their greater tolerance of human disturbance, give gulls a competitive advantage over shorebirds in prime feeding areas (Niles *et al.* 2008, p. 107).

Reduction of available horseshoe crab eggs or consolidation of spawning horseshoe crabs onto fewer beaches can increase interference competition among egg foragers. Karpanty *et al.* (2006, p. 1707) found a positive relationship between laughing gull numbers and red knot presence (i.e., more laughing gulls were present when red knots were also present), concluding that this correlation was likely due to the use by both bird species of the sandy beach areas with the highest densities of horseshoe crab eggs for foraging. Competition for horseshoe crab eggs increases with reduced egg availability, and the ability of shorebirds to compete with gulls for food decreases as shorebird flock size decreases (Breese 2010, p. 3; Niles *et al.* 2005, p. 4).

Competition between shorebirds and laughing gulls for horseshoe crab eggs increased in the 2000s as the decline in the horseshoe crab population concentrated spawning in a few favored areas (e.g., Mispillion Harbor, Delaware; Reeds Beach, New Jersey). These ''hot spots'' of horseshoe crab eggs concentrated foraging shorebirds and gulls, increasing competition for limited resources. Hot spots were known to shift in some years when severe wind and rough surf favored spawning in sheltered areas (e.g., creek mouths) (Kalasz *et al.* 2010, pp. 11–12). A reduced crab population, the contraction of spawning both spatially and temporally, and storm events that concentrated spawning into protected creek mouths exacerbated competition for available eggs in certain years (Dey *et al.* 2011b, p. 9). Delaware's shorebird conservation plan calls for control of gull populations if they exceed a natural size and negatively impact migrating birds (Kalasz 2008, p. 39).

In summary, competition with gulls can exacerbate food shortages in Delaware Bay. Despite the growth of gull populations in southern New Jersey, numbers of gulls using Delaware Bay in spring decreased considerably from the early 1990s to the early 2000s. Because more recent comparable survey data are not available, we cannot surmise if there are any recent trends in competition pressures, nor can we project a trend into the future. We conclude that gull competition was not a driving cause of red knot population declines in the 2000s, but was likely one of several factors (along with predation, storms, late arrivals of migrants, and human disturbance) that likely exacerbated the effects of reduced horseshoe crab egg availability.

Gull competition has not been reported as a threat to red knots outside of Delaware Bay (e.g., Koch pers. comm. March 5, 2013; Iaquinto pers. comm. February 22, 2013), but is likely to exacerbate other threats throughout the knot's range due to gulls' larger body sizes, high aggression, tolerance of human disturbance, and generally stable or increasing populations. However, outside of Delaware Bay, there is typically less overlap between the diets of red knots (specializing in small, buried, intertidal mollusks) and most gulls species (generalist feeders). We expect the effects of gulls to be most pronounced where red knots become restricted to reduced areas of foraging habitat, which can occur as a result of reduced food resources, human disturbance or predation that excludes knots from quality habitats, or outright habitat loss (see Cumulative Effects below).

Factor E—Harmful Algal Blooms (HABs)

A harmful algal bloom (HAB) is the proliferation of a toxic or nuisance algal species (which can be microscopic or macroscopic, such as seaweed) that negatively affects natural resources or humans (Florida Fish and Wildlife Conservation Commission (FFWCC) 2011). While most species of microscopic marine life are harmless, there are a few dozen species that create toxins given the right conditions. During a ''bloom'' event, even nontoxic species can disrupt ecosystems through sheer overabundance (Woods Hole Oceanographic Institute (Woods Hole) 2012). The primary groups of microscopic species that form HABs are flagellates (including dinoflagellates), diatoms, and blue-green algae (which are actually cyanobacteria, a group of bacteria, rather than true algae). Of the approximately 85 HAB-forming species currently documented, almost all of them are plant-like microalgae that require light and carbon dioxide to produce their own food using chlorophyll (FFWCC 2011). Blooms can appear green, brown, or red-orange, or may be colorless, depending upon the species blooming and environmental conditions. Although HABs are popularly called ''red tides,'' this name can be misleading, as it includes many blooms that discolor the water but cause no harm, while also excluding blooms of highly toxic cells that cause problems at low (and essentially invisible) concentrations (Woods Hole 2012). Here, we use the term ''red tide'' to refer only to blooms of the dinoflagellate *Karenia brevis.*

HABs—Impacts to Shorebirds

Large die-offs of fish, mammals, and birds can be caused by HABs. Wildlife mortality associated with HABs can be caused by direct exposure to toxins, indirect exposure to toxins (i.e., as the toxins accumulate in the food web), or through ecosystem impacts (e.g., reductions in light penetration or oxygen levels in the water, alteration of food webs due to fish kills or other mass mortalities) (Woods Hole 2012; Anderson 2007, p. 5; FAO 2004, p. 1). Wildlife can be exposed to algal toxins through aerosol (airborne) transport or via consumption of toxic prey (FFWCC 2011; Steidinger *et al.* 1999, p. 6). Exposure of wildlife to algal toxins may continue for weeks after an HAB subsides, as toxins move through the food web (Abbott *et al.* 2009, p. 4).

Animals exposed to algal toxins through their diets may die or display impaired feeding and immune function, avoidance behavior, physiological dysfunction, reduced growth and reproduction, or pathological effects (Woods Hole 2012). A poorly defined but potentially significant concern relates to sublethal, chronic impacts from toxic HABs that can affect the structure and function of ecosystems (Anderson 2007, p. 4). Chronic toxin exposure may have long-term consequences affecting the sustainability or recovery of natural populations at higher trophic levels (e.g., species that feed higher in the food web). Ecosystem-level effects from toxic algae may be more pervasive than yet documented by science, affecting multiple trophic levels, depending on the ecosystem and the toxin involved (Anderson 2007, pp. 4–5).

For both humans and shorebirds, shellfish are a key route of exposure to algal toxins. When toxic algae are filtered from the water as food by shellfish, their toxins accumulate in those shellfish to levels that can be lethal to humans or other animals that eat the shellfish (Anderson 2007, p. 4). Several shellfish poisoning syndromes have been identified according to their symptoms. Those shellfish poisoning syndromes that occur prominently within the range of the red knot include Amnesic Shellfish Poisoning (ASP) (occurring in Atlantic Canada, caused by *Pseudo-nitzchia* spp.); Neurotoxic Shellfish Poisoning (NSP, also called ''red tide'') (occurring on the U.S. coast from Texas to North Carolina, caused by *Karenia brevis* and other species); and Paralytic Shellfish Poisoning (PSP) (occurring in Atlantic Canada, the U.S. coast in New England, Argentina, and Tierra del Fuego, caused by *Alexandrium* spp. and others) (Woods Hole 2012; FAO 2004, p. 44). The highest levels of PSP toxins have been recorded in shellfish from Tierra del Fuego (International Atomic Energy Agency 2004), and high levels can persist in mollusks for months following a PSP bloom (FAO 2004, p. 44). In Florida, the St. Johns, St. Lucie, and Caloosahatchee Rivers and estuaries have also been affected by persistent HABs of cyanobacteria (FFWCC 2011).

Algal toxins may be a direct cause of death in seabirds and shorebirds via an acute or lethal exposure, or birds can be exposed to chronic, sublethal levels of a toxin over the course of an extended bloom. Sub-acute doses may contribute to mortality due to an impaired ability to forage productively, disrupted migration behavior, reduced nesting success, or increased vulnerability to predation, dehydration, disease, or injury (VanDeventer 2007, p. 1). It is commonly believed that the primary risk to shorebirds during an HAB is via contamination of shellfish and other invertebrates that constitute their normal diet. Coquina clams (*Donax variabilis*) and other items that shorebirds feed upon can accumulate marine toxins during HABs and may pose a risk to foraging shorebirds. In addition to consuming toxins via their normal prey items, shorebirds have been observed consuming dead fish killed by HABs (VanDeventer 2007, p. 11). VanDeventer *et al.* (2011, p. 31) observed shorebirds, including sanderlings and ruddy turnstones, scavenging fish killed during a 2005 red tide along the central west coast of Florida. Brevetoxins (discussed below) were found both in the dead fish and in the livers of dead shorebirds that were collected from beaches and rehabilitation centers (VanDeventer *et al.* 2011, p. 31). Although scavenging has not been documented in red knots, clams and other red knot prey species are among the organisms that accumulate algal toxins.

Sick or dying birds often seek shelter in dense vegetation; thus, those that succumb to HAB exposure are not often observed or documented. Birds that are debilitated or die in exposed areas are subject to predation or may be swept away in tidal areas. When extensive fish kills occur from HABs, the carcasses of smaller birds such as shorebirds may go undetected. Some areas affected by HABs are remote and rarely visited. Thus, mortality of shorebirds associated with HABs is likely underreported.

HABs—Gulf of Mexico

Algal blooms causing massive fish kills in the Gulf of Mexico have been reported anecdotally since the 1500s, but written records exist only since 1844. The dinoflagellate *Karenia brevis* has been implicated in producing harmful red tides that occur annually in the Gulf of Mexico. Red tides cause extensive marine animal mortalities and human illness through the production of highly potent neurotoxins known as brevetoxins (FFWCC 2011). Brevetoxins are toxic to fish, marine mammals, birds, and humans, but not to shellfish (FAO 2004, p. 137). *Karenia brevis* has come to be known as the Florida red tide organism and has also been implicated in HABs in the Carolinas, Alabama, Mississippi, Louisiana, and Texas in the United States, as well as in Mexico (Marine Genomics Project 2010; Steidinger *et al.* 1999, pp. 3–4). Although red tides can occur throughout the year, most typically start from late August through November and last for 4 to 5 months. Red tides lasting as long as 21 months have occurred in Florida (FFWCC 2011).

A red tide event occurred in October 2009 along the Gulf coast of Texas during the period that red knots were using the area (Niles *et al.* 2009, Appendix 2). Aerosols produced by the red tide were present and affecting human breathing on Padre Island. Over a 2-week period, hundreds of thousands of dead fish littered beaches from Mustang Island, Texas, south into northern Tamaulipas, Mexico. Most shorebirds became conspicuously absent from Gulf coast beaches during that time (Niles *et al.* 2009, p. 5). A red knot that had been captured and banded on October 6, 2009, was found 4 days later in poor condition on Mustang Island. The bird was captured by hand and taken to an animal rehabilitation facility. This bird had been resighted on October 7, the day after its original capture, when it was walking normally and feeding. At the time of first capture the bird weighed 3.9 oz (113 g); its weight on arrival at the rehabilitation facility just 4 days later was 2.7 oz (78 g) (Niles *et al.* 2009, p. 5). While there is no direct evidence, the red tide event is suspected as the reason for generally low weights and for a sharp decline in weights of red knots captured on Mustang Island during October 2009. Not only was the average mass of all the knots caught on Mustang Island low compared with other regions, but also average weights of individual catches declined significantly over the short period of field work (Niles *et al.* 2009, p. 4), coinciding with the red tide event.

Another Texas red tide event was documented by shorebird biologists in October 2011. Over a few days, the observed red knot population using Padre Island fell from 150 birds to only a few individuals. Captured birds were in extremely poor condition with weights as low as 2.9 oz (84 g) (Niles 2011c). Researchers picked up six red knots from the beach that were too weak to fly or stand and took them to a rehabilitator. Two knots that died before reaching the rehabilitation facility were tested for brevetoxin concentrations. Liver samples in both cases exceeded 2,400 nanograms of brevetoxin per gram of tissue (ng/g) (wet weight) (Newstead *et al.* in press). These levels are extremely high (Newstead *et al.* in press; Atwood 2008, p. 27). Samples from muscle and gastrointestinal tracts were also positive for brevetoxin, but at least an order of magnitude lower than in the livers. An HAB expert concluded that brevetoxins accounted for the mortality of these red knots (Newstead *et al.* in press). Whether the toxin was taken up by the birds through breathing or via consumption of contaminated food is unclear. However, other shorebird species that do not specialize on mollusks (especially sanderling and ruddy turnstone) were present during the red tide but did not appear to be affected by brevetoxins. This observation suggests uptake in the red knots may have been related to consumption of clams that had accumulated the toxin. In the case of this red tide event, the outbreak was confined to the Gulf beaches, but *Karenia brevis* is capable of spreading into bay habitats (e.g., Laguna Madre) as well. Red knots are apparently vulnerable to red tide toxins, so a widespread outbreak could significantly

diminish the amount of available habitat (Newstead *et al.* in press).

Although no HAB-related red knot mortality has been reported from Florida, HABs have become a common feature of Florida's coastal environment and are associated with fish, invertebrate, bird, manatee, and other wildlife kills (Abbott *et al.* 2009, p. 3; Steidinger *et al.* 1999, pp. v, 3–4). Red tides occur nearly every year along Florida's Gulf coast, and may affect hundreds of square miles (FFWCC 2011). Red tides are most common off the central and southwestern coasts of Florida between Clearwater and Sanibel Island (FFWCC 2011), which constitute a key portion of the red knot's Southeast wintering area (Niles 2009, p. 4; Niles *et al.* 2008, p. 17). Brevitoxins from red tides accumulate in mollusks such as the small coquina clams that red knots are known to forage on in Florida. Reports of dead birds during red tide events are not unusual but are not well documented in the scientific literature. More often, red tides are documented by reports of fish kills, which can be extensive (FFWCC 2011).

HABs—Uruguay

In April 2007, 312 red knots were found dead on the coast of southeastern Uruguay at Playa La Coronilla. Another 1,000 dead shorebirds were found nearby on the same day, also in southeastern Uruguay, but could not be confirmed to be red knots. Local bird experts suspected that the shorebird mortality event could be related to an HAB (BirdLife International 2007). However, the cause of death could not be determined, and no connection with an HAB could be established (J. Aldabe pers. comm. February 4, 2013). Red knots passing through Uruguay in April would be expected to be those that had wintered in Tierra del Fuego. A die-off of up to 1,300 red knots would account in large part for the 15 percent red knot decline observed in Tierra del Fuego in winter 2008.

HABs—Causes and Trends

During recent decades, the frequency, intensity, geographic distribution, and impacts of HABs have increased, along with the number of toxic compounds found in the marine food chain (Anderson 2007, p. 2; FAO 2004, p. 2). Coastal regions throughout the world are now subject to an unprecedented variety and frequency of HAB events. Many countries are faced with a large array of toxic or harmful species, as well as trends of increasing bloom incidence, larger areas affected, and more marine resources impacted. The causes behind this expansion are debated, with possible explanations ranging from natural mechanisms of species dispersal and enhancement to a host of human-related phenomena including climate change (Anderson 2007, pp. 3, 13; FAO 2004, p. 2). The influence of human activities in coastal waters may allow HABs to extend their ranges and times of residency (Steidinger *et al.* 1999, p. v).

Some new bloom events reflect indigenous algal populations discovered because of better detection methods and more observers. Several other ''spreading events'' are most easily attributed to natural dispersal via currents, rather than human activities (Anderson 2007, p. 11). However, human activities have contributed to the global HAB expansion by transporting toxic species in ship ballast water (Anderson 2007, p. 13). Another factor contributing to the global expansion in HABs is the substantial increase in aquaculture activities in many countries (Anderson 2007, p. 13), and the transfer of shellfish stocks from one area to another (FAO 2004, p. 2). Changed land use patterns, such as deforestation, can also cause shifts in phytoplankton species composition by increasing the concentrations of organic matter in land runoff. Acid precipitation can further increase the mobility of organic matter and trace metals in soils (FAO 2004, p. 1), which contribute to creating environmental conditions suitable for HABs.

Of the causal factors leading to HABs, excess nutrients often dominate the discussion (Steidinger *et al.* 1999, p. 2). Coastal waters are receiving large and increasing quantities of industrial, agricultural, and sewage effluents through a variety of pathways. In many urbanized coastal regions, these anthropogenic inputs have altered the size and composition of the nutrient pool which may, in turn, create a more favorable nutrient environment for certain HAB species (Anderson 2007, p. 13). Shallow and restricted coastal waters that are poorly flushed appear to be most susceptible to nutrient-related algal problems. Nutrient enrichment of such systems often leads to excessive production of organic matter (a process known as eutrophication) and increased frequencies and magnitudes of algal blooms (Anderson 2007, p. 14).

On a global basis, Anderson *et al.* (2002, p. 704) found strong correlations between total nitrogen input and phytoplankton production in estuarine and marine waters. There are also numerous examples of geographic regions (e.g., Chesapeake Bay, North Carolina's Albemarle-Pamlico Sound) where increases in nutrient loading have been linked with the development of large biomass blooms, leading to oxygen depletion and even toxic or harmful impacts on marine resources and ecosystems. Some regions have witnessed reductions in phytoplankton biomass or HAB incidence upon implementation of nutrient controls. Shifts in algal species composition have often been attributed to changes in the ratios of various nutrients (nitrogen, phosphorous, silicon) (Anderson *et al.* 2002, p. 704), and it is possible that algal species that are normally not toxic may be rendered toxic when exposed to atypical nutrient regimes resulting from human-caused eutrophication (FAO 2004, p. 1). The relationships between nutrient delivery and the development of blooms and their potential toxicity or harmfulness remain poorly understood. Due to the influence of several environmental and ecological factors, similar nutrient loads do not have the same impact in different environments, or in the same environment at different times. Eutrophication is one of several mechanisms by which harmful algae appear to be increasing in extent and duration in many locations (Anderson *et al.* 2002, p. 704).

Although important, eutrophication is not the only explanation for algal blooms or toxic outbreaks (Anderson *et al.* 2002, p. 704). The link is clear between nutrients and nontoxic algal blooms, which can cause oxygen depletion in the water, fish kills, and other ecosystem impacts (Woods Hole 2012; Anderson 2007, p. 5; Anderson *et al.* 2002, p. 704; Steidinger *et al.* 1999, p. 2). However, the connection with excess nutrients is less clear for algal species that produce toxins, as toxic blooms can begin in open water miles away from shore or the immediate influence of human activities (Steidinger *et al.* 1999, p. 2). Many of the new or expanded HAB problems have occurred in waters with no influence from pollution or other anthropogenic effects (Anderson 2007, pp. 11, 13).

The overall effect of nutrient overenrichment on harmful algae is species specific. Nutrient enrichment has been strongly linked to stimulation of some harmful algal species, but for others it has apparently not been a contributing factor (Anderson *et al.* 2002, p. 704). There is no evidence of a direct link between Florida red tides and nutrient pollution (FFWCC 2011). Elevated nutrients in inshore areas do not start these blooms but, in some instances, can allow a bloom to persist in the nutrient-rich environment for a slightly longer period than normal (Steidinger *et al.* 1999, p. 2). For those

regions and algal species where nutrient enrichment is a causative or contributing factor, increased coastal water temperatures and greater spring runoff associated with global warming may increase the frequency of HABs (USGCRP 2009, pp. 46, 150).

Coastal managers are working toward mitigation, prevention, and control of HABs. Mitigation efforts are typically focused on protecting human health (Anderson 2007, p. 15), and are thus unlikely to prevent exposure of red knots. Several challenges hinder prevention efforts, including lack of information regarding the factors that cause blooms and limitations on the extent to which those factors can be modified or controlled (Anderson 2007, p. 16). Bloom control is the most challenging and controversial aspect of HAB management. Control refers to actions taken to suppress or destroy HABs, directly intervening in the bloom process. There are five categories or strategies that can be used to combat or suppress an invasive or harmful species, consisting of mechanical, biological, chemical, genetic, and environmental control. Several of these methods have been applied to HAB species (Anderson 2007, p. 18). However, the science behind HAB control is rudimentary and slow moving, and most control methods are currently infeasible, theoretical, or only possible on an experimental scale (Anderson 2007, pp. 18–20). It is likely that HABs will always be present in the coastal environment and, in the next few decades at least, are likely to continue to expand in geographic extent and frequency (Anderson 2007, p. 2).

HABs—Summary

To date, direct impacts to red knots from HABs have been documented only in Texas, although a large die-off in Uruguay may have also been linked to an HAB. We conclude that some level of undocumented red knot mortality from HABs likely occurs most years, based on probable underreporting of shorebird mortalities from HABs and the direct exposure of red knots to algal toxins (particularly via contaminated prey) throughout the knot's nonbreeding range. We have no documented evidence that HABs were a driving factor in red knot population declines in the 2000s. However, HAB frequency and duration have increased and do not show signs of abating over the next few decades. Combined with other threats, ongoing and possibly increasing mortality from HABs may affect the red knot at the population level.

Factor E—Oil Spills and Leaks

The red knot has the potential to be exposed to oil spills and leaks throughout its migration and wintering range. Oil, as well as spill response activities, can directly and indirectly affect both the bird and its habitat through several pathways. Red knots can be exposed to petroleum products via spills from shipping vessels, leaks or spills from offshore oil rigs or undersea pipelines, leaks or spills from onshore facilities such as petroleum refineries and petrochemical plants, and beach-stranded barrels and containers that can fall from moving cargo ships or offshore rigs. Several key red knot wintering or stopover areas also contain large-scale petroleum extraction, transportation, or both activities. With regard to potential effects on red knot habitats, the geographic location of a spill, weather conditions (e.g., prevailing winds), and type of oil spilled are as important, if not more so, than the volume of the discharge.

Petroleum oils are complex and variable mixtures of many chemicals and include crude oils and their distilled products that are transported globally in large quantities. Overwhelming evidence exists that petroleum oils are toxic to birds (Leighton, 1991, p. 43). Acute exposure to oil can result in death from hypothermia (i.e., from loss of the feathers' waterproofing and insulating capabilities), smothering, drowning, dehydration, starvation, or ingestion of toxins during preening (Henkel *et al.* 2012, p. 680; Peterson *et al.* 2003, p. 2085). In shorebirds, oil ingestion by foraging in contaminated intertidal habitats and consumption of contaminated prey may also be a major contamination pathway (Henkel *et al.* 2012, p. 680; Peterson *et al.* 2003, p. 2083). Mortality from ingested oil is primarily associated with acute toxicity involving the kidney, liver, or gastrointestinal tract (Henkel *et al.* 2012, p. 680; Leighton 1991, p. 46). In addition to causing acute toxicity, ingested oil can induce a variety of toxicologically significant systemic effects (Leighton 1991, p. 46). Since shorebird migration is energetically and physiologically demanding, the sublethal effects of oil may have severe consequences that lead to population-level effects (Henkel *et al.* 2012, p. 679). Oil can have long-term effects on populations through compromised health of exposed animals and chronic toxic exposures from foraging on persistently contaminated prey or habitats (Peterson *et al.* 2003, p. 2085).

Oiled birds may also experience decreased foraging success due to a decline in prey populations following a spill or due to increased time spent preening to remove oil from their feathers (Henkel *et al.* 2012, p. 681). Shorebirds oiled during the 1996 T/V *Anitra* spill in Delaware Bay showed significant negative correlations between the amount of oiling and foraging behaviors, and significant positive correlations between oiling and time spent standing and preening (Burger 1997a, p. 293). Moreover, oil can reduce invertebrate abundance or alter the intertidal invertebrate community that provides food for shorebirds (Henkel *et al.* 2012, p. 681; USFWS 2012a, p. 35). The resulting inadequate weight gain and diminished health may delay birds' departures, decrease their survival rates during migration, or reduce their reproductive fitness (Henkel *et al.* 2012, p. 681). In addition, reduced abundance of a preferred food may cause shorebirds to move and forage in other, potentially lower quality, habitats (Henkel *et al.* 2012, p. 681; USFWS 2012a, p. 35). Prey switching has not been documented in shorebirds following an oil spill (Henkel *et al.* 2012, p. 681). However shorebirds including red knots are known to switch habitats in response to disturbance (Burger *et al.* 1995, p. 62) and to switch prey types if supplies of the preferred prey are insufficient (Escudero *et al.* 2012, pp. 359, 362). A bird's inability to obtain adequate resources delays its premigratory fattening and can delay the departure to the breeding grounds; birds arriving on their breeding grounds later typically realize lower reproductive success (see Asynchronies, above) (Henkel *et al.* 2012, p. 681; Gunnarsson *et al.* 2005, p. 2320; Myers *et al.* 1987, pp. 21–22).

Finally, efforts to prevent shoreline oiling and cleanup response activities can disturb shorebirds and their habitats (USFWS 2012a, p. 36; Burger 1997a, p. 293; Philadelphia Area Committee 1998, Annex E). Movement of response personnel on the beach and vessels in the water can flush both healthy and sick birds, causing disruptions in feeding and roosting behaviors (see Human Disturbance, above). In addition to causing disturbance, post-spill beach cleaning activities can impact habitat suitability and prey availability (see Factor A—Beach Cleaning, above). And lastly, dispersants used to break up oil can also have health effects on birds (NRC 2005, pp. 254–257).

Oil Spills—Canada

The shorebird habitats of the Mingan Islands in the Gulf of St. Lawrence

(Province of Quebec) are at risk from oil impacts because of their proximity to ships carrying oil through the archipelago to the Havre-Saint-Pierre harbor (Niles *et al.* 2008, p. 100). In March 1999, one ship spilled 40 tons (44 metric tons) of bunker fuel that washed ashore in the Mingan area. Oil from the 1999 spill did reach the islands used as a red knot foraging and staging area, but no information is available about the extent of impacts to prey species from the oil spill (USFWS 2011b, p. 23). If a similar accident were to occur during the July to October stopover period, it could have a serious impact on the red knots and their feeding areas (USFWS 2011b, p. 23; Niles *et al.* 2008, p. 100). In addition, some of the roughly 7,000 vessels per year that transit the St. Lawrence seaway illegally dump bilge waste water, which is another source of background-level oil and contaminant pollution affecting red knot foraging habitat and prey resources within the Mingan Island Archipelago (USFWS 2011b, p. 23). However, we have no specific information on the extent or severity of this contamination.

Oil Spills—Delaware Bay

The Delaware Bay and River are among the largest shipping ports in the world, especially for oil products (Clark *in* Farrell and Martin 1997, p. 24), and home to the fifth largest port complex in the United States in terms of total waterborne commerce (Philadelphia Area Committee 1998, Annex E). Every year, over 70 million tons of cargo move through the tri-state port complex, which consists of the ports of Philadelphia, Pennsylvania; Camden, Gloucester City, and Salem, New Jersey; and Wilmington, Delaware. This complex is the second largest U.S. oil port, handling about 85 percent of the east coast's oil imports (Philadelphia Area Committee 1998, Annex E).

The farthest upstream areas of Delaware Bay used by red knots (Niles *et al.* 2008, p. 43) are about 30 river miles (48 river km) downstream of the nearest port facilities, at Wilmington, Delaware. However, all vessel traffic must pass through the bay en route to and from the ports. In general, high-risk areas are where the greatest concentrations of chemical facilities are located, as major pollution incidents have typically occurred in locations where quantities of pollutant materials are stored, processed, or transported. Several areas considered high risk by the USCG are within the region used by red knots during spring migration, including Port Mahon and the Big Stone Beach Anchorage in Delaware, and the Delaware Bay and its approaches (Philadelphia Area Committee 1998, Annex E).

The narrow channel and frequent occurrence of strong wind and tide conditions increase the risk of oil spills in the Delaware River or Bay (Clark *in* Farrell and Martin 1997, p. 24); however, maritime accidents and groundings also frequently occur in fair weather and calm seas. Because the river is tidal, plumes of discharged material can spread upstream and downstream depending upon the tide. Generally, pollutants in the river travel proximally 4 mi (6.4 km) upstream during the flood cycle, and 5 mi (8 km) downstream during the ebb cycle. Wind direction and speed also play important roles in oil movement while free-floating oil remains on the water. As the Delaware River and upper bay are long and narrow, any medium or large spills are likely to affect both banks for several miles up and down the shorelines. In addition to direct spill effects, indirect impacts may occur during control of vessel traffic during a discharge, which can cause visual and noise disturbance to local wildlife, particularly shoreline-foraging species (Philadelphia Area Committee 1998, Annex E).

Although there have been several thousand spills reported in the Delaware River since 1986, the average release was only about 150 gallons (gal) (568 liters (L)) per spill. Less than 1 percent of all spills in the port are greater than 10,000 gal (37,854 L). Table 10 shows the history of spills greater than 10,000 gal (37,854 L) in the port since 1985. Based on the history of spills in the Delaware River, a release of 200,000 to 500,000 gal (757,082 to 1.9 million L) of oil is the maximum that would be expected during a major incident. Major oil spills on the Delaware River to date have been less than the maximum. There is no known history of significant tank failures (discharges) in the port, although tank fires and explosions have been documented (Philadelphia Area Committee 1998, Annex E).

TABLE 10—OIL SPILLS GREATER THAN 10,000 GALLONS (37,854 LITERS) IN THE DELAWARE RIVER AND BAY SINCE 1985

[NOAA 2013d]

| Vessel | Date | Volume (gallons) | Location | Approximate river miles from Red Knot habitat |
|---|---|---|---|---|
| M/V Athos 1 | 11/12/2004 | 265,000 | Paulsboro, NJ | 45 |
| T/V Anitra | 5/9/1996 | 42,000 | Big Stone Anchorage, DE | 0 |
| T/V Presidente Rivera | 6/24/1989 | 306,000 | Marcus Hook, NJ | 40 |
| T/V Grand Eagle | 9/28/1985 | 435,000 | Marcus Hook, NJ | 40 |
| T/V Mystra | 9/18/1985 | 10,000 | Delaware Bay | 0 |

Although the *Anitra* spill occurred in May near red knot habitat, environmental conditions caused the oil to move around the Cape May Peninsula to the Atlantic coast of New Jersey by the second half of May. Thus, oil contamination of the bayshores was minimal during the period when the greatest concentrations of red knots were present in Delaware Bay (Burger 1997a, p. 291). However, unusually large numbers of shorebirds fed on the Atlantic coast in the spring of 1996 because cold waters delayed the horseshoe crab spawn in Delaware Bay (Burger 1997a, p. 292), thus increasing the number of birds exposed to the oil. These circumstances underscore the importance of spill location and environmental conditions, not just merely spill volume, in determining the impacts of a spill on red knots. Although red knots were present in at least one oiled location (Ocean City, New Jersey) (Burger 1997a, p. 292) and at least a few knots were oiled (J. Burger pers. comm. March 5, 2013), the vast majority of impacts were to sanderlings and other shorebird species (*Anitra* Natural Resource Trustees 2004, p. 5).

Large spills upriver, or moderate spills in the upper bay, have the potential to contact a significant portion of the shorebird concentration areas. Although the migration period when crabs and shorebirds are present is

short, even a minor spill (i.e., less than 1,000 gal (3,785 L)) could, depending on the product spilled, affect beach quality for many years. Both New Jersey and Delaware officials work closely with Emergency Response managers and the USCG in planning for such an occurrence (Kalasz 2008, pp. 39–40; Clark *in* Farrell and Martin 1997, p. 24).

Oil Spills—Gulf of Mexico

As of 2010, there were 3,409 offshore petroleum production facilities in Federal waters within the Gulf of Mexico Outer Continental Shelf (OCS), down from 4,045 in 2001 (Bureau of Safety and Environmental Enforcement (BSEE) undated). Gulf of Mexico Federal offshore operations account for 23 percent of total U.S. crude oil production and 7 percent of total U.S. natural gas production. Over 40 percent of the total U.S. petroleum refining capacity, as well as 30 percent of the U.S. natural gas processing plant capacity, is located along the Gulf coast. Total liquid fuels production in 2011 was 10.3 million barrels per day (U.S. Energy Information Administration 2013). For the entire Gulf of Mexico region, total oil production in 2012 was 425 million barrels, down from 570 million barrels in 2009 (BSEE 2013).

The BSEE tracks spill incidents of one barrel or greater in size of petroleum and other toxic substances resulting from Federal OCS oil and gas activities (BSEE 2012). Table 11 shows the number of spills 50 barrels (2,100 gal (7,949 L)) or greater in the Gulf of Mexico since 1996. These figures do not include incidents stemming from substantial extraction operations in State waters. Crude oil production in 2012 was an estimated 4.9 million barrels in Louisiana State waters (Louisiana Department of Natural Resources 2013), and over 272,000 barrels in Texas State waters (Railroad Commission of Texas 2013). In Louisiana, about 2,500 to 3,000 oil spills are reported in the Gulf region each year, ranging in size from very small to thousands of barrels (USFWS 2012a, p. 37).

TABLE 11—FEDERAL OUTER CONTINENTAL SHELF SPILL INCIDENTS 50 BARRELS (2,100 GALLONS (7,949 LITERS)) OR GREATER, RESULTING FROM OIL AND GAS ACTIVITIES, 1996 TO 2012

[BSEE 2012]

| Year | Number of incidents |
|---|---|
| 2012 | 8 |
| 2011 | 3 |
| 2010 | 5 |
| 2009 | 11 |
| 2008 | 33 |
| 2007 | 4 |
| 2006 | 14 |
| 2005 | 49 |
| 2004 | 22 |
| 2003 | 12 |
| 2002 | 12 |
| 2001 | 9 |
| 2000 | 7 |
| 1999 | 5 |
| 1999 | 9 |
| 1997 | 3 |
| 1996 | 3 |

Nationwide, spill rates (the number of incidents per billion barrels of crude oil handled) in several sectors decreased or remained stable over recent decades. From 1964 to 2010, spill rates declined for OCS pipelines, and spill rates from tankers decreased substantially, probably because single-hulled tankers were largely phased out (see the ''International Laws and Regulations'' section of the Factor D supplemental document). Looking at the whole period from 1964 to 2010, nationwide spill rates for OCS platforms were unchanged for spills 1,000 barrels or greater, and decreased for spills 10,000 barrels or greater. However, spill rates at OCS platforms increased in the period 1996 to 2010 relative to the period 1985 to 1999, as the later period included several major hurricanes (e.g., Hurricane Katrina and Hurricane Rita) and the Deepwater Horizon spill (Anderson *et al.* 2012, pp. iii–iv). Generally decreasing spill rates were partially offset by increasing production, as shown in Table 12.

TABLE 12—NATIONWIDE OUTER CONTINENTAL SHELF PETROLEUM PRODUCTION, AND SPILLS 1 BARREL OR GREATER, 1964 TO 2009 *

[Anderson et al. 2012, p. 10]

| | | | Barrels spilled by spill size | | | Number of spills by spill size | | |
|---|---|---|---|---|---|---|---|---|
| Year | Barrels spilled per billion barrels produced | Billions of barrels produced | Total | 1 to 999 Barrels | 1,000 Barrels or greater | Total | 1 to 999 barrels | 1,000 Barrels or Greater |
| 1964–1970 | 255,280 | 1.54 | 394,285 | 3,499 | 390,786 | 33 | 23 | 10 |
| 1971–1990 | 16,682 | 6.79 | 113,307 | 21,415 | 91,892 | 1,921 | 1,909 | 12 |
| 1991–2009 | 6,427 | 9.2 | 59,142 | 28,144 | 30,998 | 853 | 843 | 10 |
| 1964–2009 | 32,329 | 17.53 | 566,734 | 53,058 | 513,676 | 2,807 | 2,775 | 32 |

* Spill data for 1964 to 1970 are for spills of 50 barrels or greater. Barrels of production or spillage may not add due to rounding of decimals not shown. One barrel equals 42 gallons (159 liters).

In the Gulf of Mexico, threats from oil spills are primarily from the high volume of shipping vessels, from which most documented spills have originated, traveling offshore and within connected bays. In addition to the risk of leaks and spills from offshore oil rigs, pipelines, and petroleum refineries, there is a risk of leaks from oil-filled barrels and containers that routinely wash up on the Texas coast. Federal and State land managers have protective provisions in place to secure and remove the barrels, thus reducing the likelihood of contamination (M. Bimbi pers. comm. November 1, 2012).

Chronic spills of oil from rigs and pipelines and natural seeps in the Gulf of Mexico generally involve small quantities of oil. The oil from these smaller leaks and seeps, if they occur far enough from land, tend to wash ashore as tar balls. In cases such as this, the impact is limited to discrete areas of the beach, whereas oil slicks from larger spills coat longer stretches of the shoreline. In late July and early August 2009, for example, oil suspected to have originated from an offshore oil rig in Mexican waters was observed on 14

piping plovers in south Texas (USFWS 2012a, p. 37). Mexican waters were not included in the oil and gas production or spill statistics given above.

On April 20, 2010, an explosion and fire occurred on the mobile offshore drilling unit Deepwater Horizon, which was being used to drill a well in the Macondo prospect (Mississippi Canyon 252) (Natural Resource Trustees 2012, p. 7). The rig sank and left the well releasing tens of thousands of barrels of oil per day into the Gulf of Mexico. It is estimated that 5 million barrels (210 million gal (795 million L)) of oil were released from the Macondo wellhead. Of that, approximately 4.1 million barrels (172 million gal (651 million L)) of oil were released directly into the Gulf of Mexico over nearly 3 months. In what was the largest and most prolonged offshore oil spill in U.S. history, oil and dispersants impacted all aspects of the coastal and oceanic ecosystems (Natural Resource Trustees 2012, p. 7). At the end of July 2010, approximately 625 mi (1,006 km) of Gulf of Mexico shoreline were oiled. By the end of October, 93 mi (150 km) were still affected by moderate to heavy oil, and 483 mi (777 km) of shoreline were affected by light to trace amounts of oil (USFWS 2012a, p. 36; Unified Area Command 2010). These numbers reflect weekly snapshots of shorelines experiencing impacts from oil and do not include cumulative impacts or shorelines that had already been cleaned (M. Bimbi pers. comm. November 1, 2012; USFWS 2012a, p. 36). Limited cleanup operations were still ongoing throughout the spill area in November 2012 (USFWS 2012a, p. 36). A Natural Resources Damage Assessment (NRDA) to assess injury to wildlife resources is in progress (Natural Resource Trustees 2012, pp. 8–9), but due to the legal requirements of the NRDA process, avian injury information, including any impacts to red knots, has not been released (P. Tuttle pers. comm. November 8, 2012).

Oil Spills—South America

South America—Brazil and Patgonia

Threats to red knot habitat in Maranhão, Brazil include oil pollution as well as habitat loss (see Factor A above) from offshore petroleum exploration on the continental shelf (WHSRN 2012; Niles *et al.* 2008, p. 97; COSEWIC 2007, p. 37).

Oil pollution is also a threat at several red knot wintering and stopover habitats along the Patagonian coast of Argentina including Península Valdés and Bahía Bustamante; at the latter site, 15 percent of red knots were polluted with oil during a study in 1979 (Niles *et al.* 2008, p. 98). Further south in Argentina, at a shorebird reserve and red knot stopover area in Río Gallegos near Tierra del Fuego, the main threat comes from oil and coal transport activities. Crude oil and coal are loaded onto ships at a hydrocarbon port where the estuary empties into the sea adjacent to the salt marsh zone. This area has a history of oil tankers running aground because of extreme tides, strong winds, tidal currents, and piloting errors. A shipwreck at Río Gallegos could easily contaminate key areas used by shorebirds, including red knots (WHSRN 2012; Niles *et al.* 2008, p. 98; Ferrari *et al.* 2002, p. 39). However, oil pollution has decreased significantly along the Patagonian coast (Niles *et al.* 2008, p. 98).

South America—Tierra del Fuego

The risk of an oil spill is a primary threat to the largest red knot wintering areas in both the Chilean and Argentinean portions of Tierra del Fuego (WHSRN 2012; Niles *et al.* 2008, pp. 98–99; COSEWIC 2007, p. 36) due to the proximity of large-scale oil operations close to key red knot habitats. In recent years, oil operations have been decreasing in Chile around Bahía Lomas, but increasing along the Argentinean coast of Tierra del Fuego (Niles *et al.* 2008, p. 98; COSEWIC 2007, pp. 36–37).

The region of Magellan, Chile, has traditionally been an important producer of oil and natural gas since the first oil discovery was made in 1945 within 6.2 mi (10 km) of the bayshore, in Manantiales. Production continues, although local oil activity has diminished over the last 20 years. Oil is extracted by drilling on land and offshore, the latter with no new drillings between 2000 and 2008. The largest single red knot wintering site, Bahía Lomas, has several oil platforms. Most are static, and several were closed around 2007 as the oil resource had been depleted (Niles *et al.* 2008, p. 98). However, the red knot area at Bahía Lomas remains at risk from a spill or leak from the remaining oil extraction facilities.

Exposure of red knots to hydrocarbon pollution at Bahía Lomas could also come from shipping accidents, as the site is located at the eastern end of the Strait of Magellan, an area historically characterized by high maritime shipping traffic (WHSRN 2012). Two oil spills from shipping have been recorded near the Strait of Magellan First Narrows (immediately west of Bahía Lomas), one involving 53,461 tons (48,500 metric tons) in 1974 and one involving 99 tons (90 metric tons) in 2004 (Niles *et al.* 2008, p. 98; COSEWIC 2007, p. 36). No incidents have been reported of red knots being affected by substantial oiling of the plumage or effects to the prey base. However, small amounts of oil have been noted on some red knots caught during banding operations (Niles *et al.* 2008, p. 98; COSEWIC 2007, p. 36).

In 10 of the 12 years since 2000 for which survey data are available, Bahía Lomas supported over half of the total Argentina-Chile wintering population of red knots, rising to over 90 percent from 2010 through 2012 (G. Morrison pers. comm. August 31, 2012). Thus, a significant spill (or several small spills) has the potential to substantially impact red knot populations, depending on the timing and severity of oil contamination within red knot habitats. The National Oil Company extracts, transports, and stores oil in the area next to Bahía Lomas and has been an important and cooperative partner in conservation of the bay (WHSRN 2012), including recent efforts to develop a management plan for the area (Niles *in* Ydenberg and Lank 2011, p. 198).

On the nearby Atlantic Ocean coast of Argentinean Tierra del Fuego, oil drilling increased around 1998 (Niles *et al.* 2008, p. 98; COSEWIC 2007, pp. 36–37). In the Argentina portion of Tierra del Fuego, Bahía San Sebastián is the area most vulnerable from oil and gas operations that occur on lands near the coast and beach. Bahía San Sebastián is surrounded by hundreds of oil wells (Gappa and Sueiro 2007, p. 680). An 18-in (46-cm) pipe submerged in the bay runs 2.9 mi (4.5 km) out to a buoy anchored to the seabed (WHSRN 2012). The pipe is used to load crude oil onto tankers bound for various distilleries in the country (WHSRN 2012; Gappa and Sueiro 2007, p. 680). Wind velocities over 37 mi per hour (60 km per hour) typically occur for 200 days of the year, and loading and transport of hydrocarbons often take place during rough seas. Thus, an oil spill is a persistent risk and could have long-term effects (Gappa and Sueiro 2007, p. 680). While companies have strict security controls, this activity remains a potential threat to shorebirds in the area (WHSRN 2012).

Farther south on Tierra del Fuego, the area near the shorebird reserves at Río Grande, Argentina, is important for onshore and offshore oil production, which could potentially contribute to oil pollution, especially from oil tankers loading around Río Grande City. No direct evidence exists of red knots being affected by oil pollution, but it remains a risk (Niles *et al.* 2008, pp. 98–99).

Oil Spills—Summary

Red knots are exposed to large-scale petroleum extraction and transportation operations in many key wintering and stopover habitats including Tierra del Fuego, Patagonia, the Gulf of Mexico, Delaware Bay, and the Gulf of St. Lawrence. To date, the documented effects to red knots from oil spills and leaks have been minimal; however, information regarding any oiling of red knots during the Deepwater Horizon spill has not yet been released. We conclude that high potential exists for small or medium spills to impact moderate numbers of red knots or their habitats, such that one or more such events is likely over the next few decades, based on the proximity of key red knot habitats to high-volume oil operations. Risk of a spill may decrease with improved spill contingency planning, infrastructure safety upgrades, and improved spill response and recovery methods. However, these decreases in risk (e.g., per barrel extracted or transported) could be offset if the total volume of petroleum extraction and transport continues to grow. A major spill affecting habitats in a key red knot concentration area (e.g., Tierra del Fuego, Gulf coasts of Florida or Texas, Delaware Bay, Mingan Archipelago) while knots are present is less likely but would be expected to cause population-level impacts.

Factor E—Environmental Contaminants

Environmental contaminants can have profound effects on birds, acting from the molecular through population levels (Rattner and Ackerson 2008, p. 344). Little experimental work has been done on the toxic effects of organochlorines (e.g., polychlorinated biphenyls (PCBs); pesticides such as DDT (dichloro-diphenyl-trichloroethane), dieldrin, and chlordane) or trace elements (e.g., mercury, cadmium, arsenic, selenium) in shorebirds, but adult mortality due to organochlorine poisoning has been recorded (Braune and Noble 2009, pp. 200–201).

Contaminants—Canada

In 1991 and 1992, Braune and Noble (2009, p. 185) tested 12 shorebird species (not including *Calidris canutus*) from 4 sites across Canada (including 2 red knot stopover areas) for PCBs, organochlorine pesticides, mercury, selenium, cadmium, and arsenic. Contaminant exposure among species varied with diet, foraging behavior, and migration patterns. Diet composition seemed to provide a better explanation for contaminant exposure than bill length or probing behaviors. Based on the concentrations measured, researchers found no indication that contaminants were adversely affecting the shorebird species sampled in this study (Braune and Noble 2009, p. 201).

Heavy shipping traffic in the Gulf of St. Lawrence (Province of Quebec) presents a risk of environmental contamination, as well as possible oil spills (which were discussed above). Red knot habitats in the Mingan Islands are particularly at risk because large ships carrying titanium and iron navigate through the archipelago to the Havre-Saint-Pierre harbor throughout the year (COSEWIC 2007, p. 37).

At another red knot stopover area, the Bay of Fundy, chemicals such as herbicides and pesticides originate from farming activities along tidal rivers and accumulate in intertidal areas. These contaminants build up in the tissues of intertidal invertebrates (e.g., the burrowing amphipod *Corophium volutator* and the small clam *Macoma balthica*) that are, in turn, ingested by shorebirds, but with unknown consequences (WHSRN 2012).

Contaminants—Delaware Bay

The Delaware River and Bay biota are contaminated with PCBs and other pollutants (Suk and Fikslin 2006, p. 5). However, one preliminary study suggests that organic pollutants are not impacting shorebirds that eat horseshoe crab eggs. In 1992, USFWS (1996, p. i) tested horseshoe crab eggs, sand, and ruddy turnstones from two beaches on the Delaware side of Delaware Bay for organochlorines and trace metals. Sand, eggs, and bird tissues contained low to moderately elevated levels of contaminants. This limited study suggested that contamination of the shorebirds at Delaware Bay was probably not responsible for any decline in the population. However, at the time of this study, detection limits for organic contaminants were much higher than those that are now possible using current analytical capabilities. Thus, lower levels of contamination (which may impact wildlife) could not be detected by the testing that was performed (detection limits for horseshoe crab eggs were 0.07 to 0.20 parts per million (ppm), wet weight). Only one egg sample had a quantifiable level of PCBs, but this could have been due to the limitations of the tests to detect lower levels. A more extensive survey of horseshoe crab eggs throughout Delaware Bay would provide a more definitive assessment (USFWS 1996, p. i), especially if coupled with current analytical methods that can quantify residues at much lower concentrations. However, we are unaware of any plans to update this study.

Burger *et al.* (1993, p. 189) examined concentrations of lead, cadmium, mercury, selenium, chromium, and manganese in feathers of shorebirds, including red knots migrating north through Cape May, New Jersey, in 1991 and 1992. Although these authors predicted that metal levels would be positively correlated with weight, this was true only for mercury in red knots. Selenium was negatively correlated with weight in red knots. No other significant correlation of metal concentrations with weight was found. Selenium and manganese were highest in red knots, while lead, mercury, chromium, and cadmium were higher in other species (Burger *et al.* 1993, p. 189). Metal levels in the feathers partially reflect the extent of pollution at the location of the birds during feather formation, so these feather concentrations may not necessarily correspond to exposure during the Delaware Bay stopover (Burger *et al.* 1993, p. 193). The results of this study suggest that the levels of cadmium, lead, mercury, selenium, and manganese were similar to levels reported from other shorebird studies. However, the levels of chromium in this study were much higher than had been reported for other avian species (Burger *et al.* 1993, pp. 195–196).

Burger (1997b, p. 279) measured lead, mercury, cadmium, chromium, and manganese concentrations in the eggs of horseshoe crabs from 1993 to 1995, and from leg muscle tissues in 1995, in Delaware Bay. In eggs, mercury levels were below 100 parts per billion (ppb), or were nondetectable. Cadmium levels were generally low in 1993 and 1995 but were relatively higher in 1994. Lead levels in eggs decreased from 558 ppb in 1993 to 87 ppm in 1995. Selenium increased, chromium decreased, and manganese generally decreased. Leg muscles had significantly lower levels of all metals than eggs, except for mercury (Burger 1997b, p. 279). The high levels of some metals in eggs of horseshoe crabs may partially account for similar high levels in the feathers of shorebirds that feed on crab eggs while in Delaware Bay (Burger 1997b, p. 285).

Burger *et al.* (2002, p. 227) examined the levels of arsenic, cadmium, chromium, lead, manganese, mercury, and selenium in the eggs and tissues of 100 horseshoe crabs collected at 9 sites from Maine to Florida, including Delaware Bay. Arsenic levels were the highest, followed by manganese and selenium, while levels for the other metals averaged below 100 ppb for most tissues. The levels of contaminants

found in horseshoe crabs, with the possible exceptions of arsenic in Florida and mercury in Barnegat Bay (New Jersey) and Prime Hook (Delaware), were below those known to cause adverse effects in the crabs themselves or in organisms that consume them or their eggs.

Revisiting the 1997 study specific to Delaware Bay, Burger *et al.* (2003, p. 36) examined the concentrations of arsenic, cadmium, chromium, lead, manganese, mercury, and selenium in the eggs and tissues of horseshoe crabs from eight locations on both sides of Delaware Bay. Locational differences were detected but were small. Further, contaminant levels were generally low. The levels of contaminants found in horseshoe crabs were well below those known to cause adverse effects in the crabs themselves or in organisms that consume them or their eggs. Contaminant levels have generally declined in the eggs of horseshoe crabs from 1993 to 2001, suggesting that contaminants are not likely to be a problem for secondary consumers like red knot, or a cause of their decline.

Botton *et al.* (2006, p. 820) found no significant differences in the percentage of horseshoe crab eggs that completed development when cultured using water from Jamaica Bay (New York) or from lower Delaware Bay, a less polluted location. Only one percent of the embryos from Jamaica Bay exhibited developmental anomalies, a frequency comparable to a previously studied population from Delaware Bay. These authors suggested that the distribution and abundance of horseshoe crabs in Jamaica Bay were not limited by water quality (Botton *et al.* 2006, p. 820). This finding suggests that horseshoe crabs are not particularly sensitive to differences in water quality.

The USFWS (2007b, p. ii) examined embryonic, larval, and juvenile horseshoe crab responses to a series of exposures (from 0 to 100 ppb) of methoprene, a mosquito larvicide (a pesticide that kills specific insect larvae). The results provided no evidence that a treatment effect occurred, with no obvious acute effects of environmentally relevant concentrations of methoprene on developing horseshoe crab embryos, larvae, or first molt juveniles. The study results suggested that exposure to methoprene may not be a limiting factor to horseshoe crab populations. However, horseshoe crab life stages after the first molt were not tested for methoprene effects, which have been found in other marine arthropod species. Walker *et al.* (2005, pp. 118, 124) found that methoprene was toxic to lobster (*Homarus americanus*) stage II larvae at 1 ppb, and that stage IV larvae were more resistant but did exhibit significant increases in molt frequency beginning at exposures of 5 ppb. However, we do not have information on how or to what extent these levels of methoprene may affect horseshoe crab populations or red knots, through their consumption of exposed horseshoe crab eggs.

Contaminants—Florida

A piping plover was found among dead shorebirds discovered on a sandbar near Marco Island, Florida, following the county's aerial application of the organophosphate pesticide Fenthion for mosquito control in 1997 (Pittman 2001; Williams 2001). The USEPA has subsequently banned the use of Fenthion (American Bird Conservancy 2012b). Marco Island also supports an important concentration of red knots, but it is unknown if any red knots were affected by Fenthion at this or other sites.

Contaminants—South America

Blanco *et al.* (2006, p. 59) documented the value of South American rice fields as an alternative feeding habitat for waterbirds. Agrochemicals are used in the management of rice fields. Although shorebirds are not considered harmful to the rice crop, they are exposed to lethal and sublethal doses of toxic products while foraging in these habitats. Rice fields act as important feeding areas for migratory shorebirds but can become toxic traps without adequate management (Blanco *et al.* 2006, p. 59). In rice field surveys from November 2004 to April 2005, red knots constituted only 0.7 percent of shorebirds observed, with three knots in Uruguay and none in Brazil or Argentina (Blanco *et al.* 2006, p. 59). Thus, exposure in these countries is low; however, much larger numbers of red knots (1,700) have been observed in rice fields in French Guiana (Niles 2012b), and 6 red knots have been reported from rice fields in Trinidad (eBird.org 2012).

Threats to red knot habitat in Maranhão, Brazil, include iron ore and gold mining, which can cause mercury contamination (WHSRN 2012; Niles *et al.* 2008, p. 97; COSEWIC 2007, p. 37). The important migration stopover area at San Antonio Oeste, Argentina faces potential pollution from a soda ash factory built in 2005, which could release up to 250,000 tons of calcium chloride per year, affecting intertidal invertebrate food supplies. Garbage and port activities are additional sources of pollution in this region (WHSRN 2012; Niles *et al.* 2008, p. 98; COSEWIC 2007, p. 37).

At the southern Argentinean stopover of Río Gallegos, a trash dump adjoins the feeding and roosting areas used by shorebirds. Garbage is spread quickly by the strong winds characteristic of the region and is deposited over large parts of the estuary shore. This trash diminishes habitat quality, especially when plastics, such as polythene bags, cover foraging or roosting habitats (Niles *et al.* 2008, p. 98; Ferrari *et al.* 2002, p. 39). Pollution at Río Gallegos also stems from untreated sewage, but a project is under way to carry the waste offshore instead of discharging it into the shorebird habitats (WHSRN 2012) (see Factor A—Coastal Development—Other Countries).

In the past, organic waste from the City of Río Grande (in Argentinean Tierra del Fuego, population approximately 50,000), including that from a chicken farm, has been released at high tide over the flats where red knots feed (Atkinson *et al.* 2005, p. 745). We have no direct evidence of red knots having been affected by organic waste, but it remains a potential source of contamination risk (e.g., nutrients, trace metals, pesticides, pathogens, pharmaceuticals, endocrine disruptors) (Fisher *et al.* 2005, pp. iii, 4, 34) to the knots and their wintering habitat. As at Río Gallegos, wind-blown trash from a nearby landfill degrades shorebird habitats at one location in Río Grande, but the City is working to relocate the landfill. In addition, a methanol and urea plant and two seaports are in development (WHSRN 2012), which could also increase pollution.

Contaminants—Summary

Although red knots are exposed to a variety of contaminants across their nonbreeding range, we have no evidence that such exposure is impacting health, survival, or reproduction at the subspecies level. Exposure risks exist in localized red knot habitats in Canada, but best available data suggest shorebirds in Canada are not impacted by background levels of contamination. Levels of most metals in red knot feathers from the Delaware Bay have been somewhat high but generally similar to levels reported from other studies of shorebirds. One preliminary study suggests organochlorines and trace metals are not elevated in Delaware Bay shorebirds, although this finding cannot be confirmed without updated testing. Levels of metals in horseshoe crabs are generally low in the Delaware Bay

region and not likely impacting red knots or recovery of the crab population.

Horseshoe crab reproduction does not appear impacted by the mosquito control chemical methoprene (at least through the first juvenile molt) or by ambient water quality in mid-Atlantic estuaries. Shorebirds have been impacted by pesticide exposure, but use of the specific chemical that caused a piping plover death in Florida has subsequently been banned in the United States. Exposure of shorebirds to agricultural pollutants in rice fields may occur regionally in parts of South America, but red knot usage of rice field habitats was low in the several countries surveyed. Finally, localized urban pollution has been shown to impact South American red knot habitats, but we are unaware of any documented health effects or population-level impacts. Thus, we conclude that environmental contaminants are not a threat to the red knot. However, see Cumulative Effects, below, regarding an unlikely but potentially high-impact synergistic effect among avian influenza, environmental contaminants, and climate change in Delaware Bay.

Factor E—Wind Energy Development

Within the red knot's U.S. wintering and migration range, substantial development of offshore wind facilities is planned, and the number of wind turbines installed on land has increased considerably over the past decade. The rate of wind energy development will likely continue to increase into the future as the United States looks to decrease reliance on the traditional sources of energy (e.g., fossil fuels). Wind turbines can have a direct (e.g., collision mortality) and indirect (e.g., migration disruption, displacement from habitat) impact on shorebirds. We have no information on wind energy development trends in other countries, but risks of red knot collisions would likely be similar wherever large numbers of turbines are constructed along migratory pathways, either on land or offshore.

Wind Energy—Offshore

In 2007, the DOI's Bureau of Ocean Energy Management (BOEM)—formerly called the Minerals Management Service (MMS) and the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE))—established an Alternative Energy and Alternate Use Program for the U.S. OCS, under which BOEM may issue leases, easements, and rights-of-way for the production and transmission of non-oil and -gas energy sources (MMS 2007, p. 2). Since 2009, DOI has developed a regulatory framework for offshore wind projects in Federal waters and launched an initiative to facilitate the siting, leasing, and construction of new projects (Department of Energy (DOE) and BOEMRE 2011, p. iii). In 2011, the U.S. Department of Energy (DOE) and BOEM released a National Offshore Wind Strategy (National Strategy) that articulates a national goal of 54 gigawatts (GW) of deployed offshore wind-generating capacity by 2030, with an interim target of 10 GW of capacity deployed by 2020. To achieve these targets, the United States would have to reduce the cost of offshore wind energy production and the construction timelines of offshore wind facilities. The National Strategy illustrates the commitment of DOE and DOI to spur the rapid and responsible development of offshore wind energy (DOE and BOEMRE 2011, p. iii).

In addition to these Federal efforts, several States are considering installation of offshore wind turbines in their jurisdictional ocean waters (i.e., up to 3 nautical miles (5.6 km) off the Atlantic coast; variable distances in the Gulf of Mexico) (DOE 2013; Rhode Island Coastal Resources Management Council 2012, p. i). Although New Jersey is pursuing wind projects in State waters, State officials concluded in 2009 that Delaware Bay is not an appropriate site for a large-scale wind turbine project because of potential impacts to shorebirds (NJDEP 2009a, p. 1; NJDEP 2009b, entire). Delaware has plans to document shorebird movement patterns to and from Delaware Bay during the stopover to identify siting locations that will minimize wind turbine impacts to these species (Kalasz 2008, p. 40).

To date, no offshore wind facilities have been installed in the United States. However in 2010, BOEM issued the first lease to build a wind facility in Federal waters, authorizing the Cape Wind Energy Project off the southeast coast of Massachusetts (DOE and BOEMRE 2011, p. 41). Mapping from BOEM (2013) shows additional leases have been executed for two smaller areas about 10 and 16 mi (16 and 26 km) southeast of Atlantic City, New Jersey and for a larger area about 14 mi (22 km) southeast of the mouth of the Delaware Bay. Offshore wind projects have been proposed off the coasts of Texas and Northern Mexico (Newstead *et al.* in press), and five States recently entered an agreement with the Federal Government to facilitate wind energy development in the Great Lakes (Council on Environmental Quality 2012, p. 1).

Analysis by the DOE shows the potential for wind energy, and offshore wind in particular, to reduce greenhouse gas emissions in a rapid and cost-effective manner (DOE and BOEMRE 2011, p. 5). However, large-scale installation of offshore wind turbines represents a potential collision hazard for red knots during their migration (Burger *et al.* 2012c, p. 370; Burger *et al.* 2011, p. 348; Watts 2010, p. 1), and offshore wind resources within the U.S. range of the red knot show high potential for wind energy development (DOE and BOEMRE 2011, pp. 5–6). Avian collision risks are related to both the total number of turbines and the height of the turbines (Kuvlesky *et al.* 2007, p. 2488; NRC 2007, p. 138; Chamberlain *et al.* 2006, p. 198). Increasing power output per turbine is key to reducing the cost of offshore wind energy generation, necessitating the development of larger turbines (DOE and BOEMRE 2011, p. 15). As approved, the Cape Wind Energy facility will include 130, 3.6-megawatt (MW) wind turbines, each with a maximum blade height of 440 ft (134 m) above sea level (BOEM 2012, p. 1). The DOE and BOEM envision the height of offshore turbines increasing to 617 ft (188 m) above sea level for 8–MW turbines by 2020, and to 681 ft (207.5 m) above sea level for 10–MW turbines by 2030 (DOE and BOEMRE 2011, p. 15). Using a range of 3.6 to 10 MW of generating capacity per turbine, the national goal of 54 GW would require between 5,400 and 15,000 turbines to be installed in U.S. waters.

Buildout (when all available sites are either developed or restricted) of the wind industry along the Atlantic coast will result in the largest network of overwater avian hazards ever constructed, adding a new source of mortality to many bird populations (Watts 2010, p. 1), some of which can little tolerate further reductions before realizing population-level effects. Watts (2010, p. 1) used a form of harvest theory called Potential Biological Removal to develop a population framework for estimating sustainable limits on human-induced bird mortality. Enough information was available from the literature for 46 nongame waterbird species to allow for estimates of sustainable mortality limits from all human-caused sources. Among these 46 populations, red knot stood out as having particularly low mortality limits (Watts 2010, p. 1).

Using an estimated rangewide population size of 20,000 red knots, Watts (2010, p. 39) estimated that human-induced direct mortality exceeding 451 birds per year would start to cause population declines. This estimate of 451 birds per year could

increase with the use of updated estimates of population size (see the ''Population Surveys and Estimates'' section of the Rufa Red Knot Ecology and Abundance supplemental document) and survival (e.g., Schwarzer *et al.* 2012, p. 729; McGowan *et al.* 2011a, p. 13). While the Watts (2010, p. 39) model underscores the vulnerability of red knot populations to direct human-caused mortality from any source (see also Oil Spills and Leaks, Harmful Algal Blooms, and Factor B, above), we have only preliminary information on the actual red knot collision risk posed by offshore wind turbines (e.g., based on collision rates in other countries, the effects of weather and artificial lighting, behavioral avoidance capacity, flight altitudes, migration routes). Best available data regarding these risk factors are presented below, but are currently insufficient to estimate the likely annual mortality of red knots upon buildout of offshore wind infrastructure.

Research from Europe, where several offshore wind facilities are in operation, suggests that bird collision rates with offshore turbines may be higher than for turbines on land. For various waterbird species, annual collision rates from 6.7 to 19.1 birds per turbine have been reported (Kuvlesky *et al.* 2007, p. 2489). Collision risks depend on turbine design and configuration, geography, attractiveness of the habitat, behavior and ecology of the species, habitat and spatial use, and ability of the birds to perceive and avoid wind turbines at close range (Burger *et al.* 2011, p. 340; Kuvlesky *et al.* 2007, p. 2488; NRC 2007, p. 138).

A number of studies from Europe also suggest that wind facilities could displace migrating waterfowl and shorebirds, create barriers to migration, and alter flight paths between foraging and roosting habitats (Kuvlesky *et al.* 2007, p. 2489). Such effects are thought to extend at least 1,969 ft (600 m) from the wind facility, but could extend 1.2 to 4.5 mi (2 to 4 km) for some species (Kuvlesky *et al.* 2007, p. 2490). Avoidance of wind energy facilities varies among species and depends on site, season, tide, and whether the facility is in operation. Disturbance tends to be greatest for migrating birds while feeding and resting (NRC 2007, p. 108). As with the potential for increasing hurricane frequency or severity (discussed under Asynchronies—Fall Migration, above), extra flying to avoid obstacles during migration represents additional energy expenditure (Niles *et al.* 2010a, p. 129), which could impact survival as well as the timing of arrival at stopover areas (see Asynchronies, above). However, displacement of birds from habitats around wind facilities somewhat reduces the risks of turbine collisions.

Although little shorebird-specific information is available, the effect of weather on migrating bird flight altitudes has been well documented through the use of radar and thermal imagery. Numerous studies indicate that the risk of bird collisions with wind turbines (including offshore turbines) increases as weather conditions worsen and visibility decreases (Drewitt and Langston 2006, p. 31; Hüppop *et al.* 2006, pp. 102, 105–107; Exo *et al.* 2003 p. 51). If birds are migrating at high altitudes and suddenly encounter fog, precipitation, or strong head winds, they may be forced to fly at lower altitudes, increasing their collision risks if they fly in the rotor (i.e., turbine blade) swept zone (Drewitt and Langston 2006, p. 31). Avoidance behavior is likely to vary according to conditions. It is reasonable to expect that avoidance rates would be much reduced at times of poor visibility, in poor weather, at night (Chamberlain *et al.* 2006, p. 199), and under varying structure illumination conditions (Drewitt and Langston 2006, p. 31; Hüppop *et al.* 2006, p. 105). The greatest collision risk occurs at night, particularly in unfavorable weather conditions. Behavioral observations have shown that most birds fly closer to the height of turbine rotor blades at night than during day, and that more birds collide with rotor blades at night than by day (Exo *et al.* 2003, p. 51).

Burger *et al.* (2011, pp. 341–342) used a weight-of-evidence approach to examine the risks and hazards from offshore wind development on the OCS for three species of coastal waterbirds, including red knot. Three levels of exposure were identified: Micro-scale (whether the species is likely to fly within the rotor swept area, governed by behavioral avoidance abilities); meso-scale (occurrence within the rotor swept zone or hazard zone, governed by flight altitude); and macro-scale (occurrence of species within the geographical areas of interest). Regarding micro-scale exposure, little is known about the red knot's abilities to behaviorally avoid turbine collisions (Burger *et al.* 2011, p. 346), an important factor in determining collision risk (Chamberlain *et al.* 2006, p. 198). The red knot's visual acuity and maneuverability are known to be good, but no actual interactions with wind turbines have been observed. The red knot's ability to avoid turbines, even if normally good, could be reduced in poor visibility, high winds, or inclement weather.

Avoidance may be more difficult upon descent after long migratory flights than on ascent (Burger *et al.* 2011, p. 346). Lighting on tall structures has been shown to be a significant risk factor in avian collisions (Kuvlesky *et al.* 2007, p. 2488; Manville 2009; entire). Particularly during inclement weather, birds become disoriented and entrapped in areas of artificially lighted airspace. Although the response of red knots to lighting is not known, red knots are inferred to migrate during both night and day, based on flight durations and distances documented by geolocators (Normandeau Associates, Inc. 2011, p. 203), and lighting is generally required on wind turbines for aviation safety (Federal Aviation Administration 2007, pp. 33–34).

Regarding meso-scale exposure, the migratory flight altitude of red knots remains unknown (Normandeau Associates, Inc. 2011, p. 203). However, some experts estimate the normal cruising altitude of red knots during migration to be in the range of 3,281 to 9,843 ft (1,000 to 3,000 m), well above the estimated height of even a 10–MW turbine (681 ft; 207.5 m). However, much lower flight altitudes may be expected when red knots encounter bad weather or high winds, on ascent or descent from long-distance flights, during short-distance flights if they are blown off course, during short coastal migration flights, or during daily commuting flights (e.g., between foraging and roosting habitats) (Burger *et al.* 2012c, pp. 375–376; Burger *et al.* 2011, p. 346). As judged by tree heights, Burger *et al.* (2012c, p. 376) observed knots flying at heights of up to 400 ft (120 m) when flying away from disturbances and when moving between foraging and roosting areas. Based on observations of ruddy turnstones and other *Calidris canutus* subspecies departing from Iceland towards Nearctic breeding rounds in spring 1986 to 1988, Alerstam *et al.* (1990, p. 201) found that departing shorebirds climbed steeply, often by circling and soaring flight, with an average climbing rate of 3.3 ft per second (1.0 m per second) up to altitudes of 1,969 to 6,562 ft (600 to 2,000 m) above sea level. With unfavorable winds, the shorebirds descended to fly low over the sea surface (Alerstam *et al.* 1990, p. 201).

Regarding macro-scale exposure, red knot migratory crossings of the Atlantic OCS are likely to occur broadly throughout this ocean region, with possible concentrations south of Cape Cod in fall and south of Delaware Bay in spring (Normandeau Associates, Inc. 2011, p. 201). Shorter-distance migrants (e.g., those wintering in the Southeast)

were initially thought to be at lower risk of collision with offshore turbines, particularly turbines located far off the coast such as in the OCS (Burger *et al.* 2011, pp. 346, 348). However, information from nine geolocator tracks showed that both short-distance and long-distance (e.g., birds wintering in South America) migrants crossed the OCS at least twice per year, with some birds crossing as many as six times. These numbers reflect only long flights, and many more crossings of the OCS may occur as red knots make shorter flights between states (Burger *et al.* 2012c, p. 374). The geolocator results suggest that short-distance migrants may actually face greater collision hazards from wind development in this region. The six birds that wintered in the Southeast spent an average of 218 days (60 percent of the year) migrating, stopping over, or wintering on the U.S. Atlantic coast, while the 3 birds that wintered in South America spent only about 22 days (about 6 percent of the year) in this region (Burger *et al.* 2012c, p. 374). Thus, long-distance migrants may spend less time exposed to turbines built off the U.S. Atlantic coast.

South of the Atlantic coast stopovers, red knots' migratory pathways may be either coast-following, OCS-crossing, or a mixture of both (Normandeau Associates, Inc. 2011, p. 202). While some extent of coast-following is likely to occur, studies to date suggest that a large fraction of the population is likely to cross the OCS at significant distances offshore (e.g., to follow direct pathways between widely separated migration stopover points) (Burger *et al.* 2012c, p. 376; Normandeau Associates, Inc. 2011, p. 202). Based on the red knot's life history and geolocator results to date, macro-scale exposure of red knots to wind facilities is likely to be widely but thinly spread over the Atlantic OCS (Normandeau Associates, Inc. 2011, p. 202). Hazards to red knots from wind energy development likely increase for facilities situated closer to shore, particularly near bays and estuaries that serve as major stopover or wintering areas (Burger *et al.* 2011, p. 348).

Although exposure of red knots to collisions with offshore wind turbines is broad geographically, exposure is much more restricted temporally, occurring mainly during brief portions of the spring and fall migration when long migratory flights occur over open water (Normandeau Associates, Inc. 2011, p. 202). The rest of the red knot's annual cycle is largely restricted to coastal and near-shore habitats (Normandeau Associates, Inc. 2011, p. 202), during which times collision hazards with land-based turbines (discussed below) would represent a greater hazard than for turbines in the offshore environment.

Taking advantage of the limited temporal exposure of migrating birds to offshore turbine collisions, the authorization for one offshore wind facility in New Jersey's State waters includes operational shutdowns during certain months when red knots and two federally listed bird species (piping plovers and roseate terns) may be present. The shutdowns would occur only during inclement weather conditions (USFWS 2012d, p. 3) that may prompt lower migration altitudes and hinder avoidance behaviors.

Wind Energy—Terrestrial

The number of land-based wind turbines installed within the U.S. range of the red knot has increased substantially in the past decade (table 13). As of 2009, estimates of total avian mortality at U.S. turbines ranged from 58,000 to 440,000 birds per year, and were associated with high uncertainty due to inconsistencies in the duration and intensity of monitoring studies (Manville 2009, p. 268). In 2008, DOE released a report to investigate the feasibility of achieving 20 percent of U.S. electricity from wind by 2030 (DOE 2008, p. 1), a scenario that would substantially reduce U.S. carbon dioxide emissions (DOE 2008, p. 107). The 20 percent wind scenario envisions 251 GW of land-based generation in addition to 54 GW of shallow-water offshore production (DOE 2008, p. 10). Using an average capacity of 2 MW per turbine (University of Michigan 2012, p. 1), a 251–GW target would require about 125,500 turbines. The DOI strongly supports renewable energy, including wind development, and the Service works to ensure that such development is bird- and habitat-friendly (Manville 2009, p. 268). In 2012, the Service updated the 2003 voluntary guidelines to provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development (USFWS 2012e, p. vi).

TABLE 13—INSTALLED WIND ENERGY GENERATION CAPACITY BY STATE WITHIN THE U.S. RANGE OF THE RED KNOT (INCLUDING INTERIOR MIGRATION PATHWAYS), 1999 AND 2012 (DOE 2012).

[U.S. average turbine size was 1.97 MW in 2011, up from 0.89 MW in 2000 (University of Michigan 2012, p. 1). We divided the megawatts by these average turbine sizes to estimate the numbers of turbines.]

| State | 1999 | | 2012 | |
|---|---|---|---|---|
| | Megawatts | Estimated number of turbines | Megawatts | Estimated number of turbines |
| Alabama | 0.000 | 0 | 0 | 0 |
| Arkansas | 0.000 | 0 | 0 | 0 |
| Colorado | 21.600 | 24 | 2,301 | 1,168 |
| Connecticut | 0.000 | 0 | 0 | 0 |
| Delaware | 0.000 | 0 | 2 | 1 |
| Florida | 0.000 | 0 | 0 | 0 |
| Georgia | 0.000 | 0 | 0 | 0 |
| Illinois | 0.000 | 0 | 3,568 | 1,811 |
| Indiana | 0.000 | 0 | 1,543 | 783 |
| Iowa | 242.420 | 272 | 5,137 | 2,608 |
| Kansas | 1.500 | 2 | 2,712 | 1,377 |
| Kentucky | 0.000 | 0 | 0 | 0 |
| Louisiana | 0.000 | 0 | 0 | 0 |
| Maine | 0.100 | 0 | 431 | 219 |
| Maryland | 0.000 | 0 | 120 | 61 |
| Massachusetts | 0.300 | 0 | 100 | 51 |
| Michigan | 0.600 | 1 | 988 | 502 |
| Minnesota | 273.390 | 307 | 2,986 | 1,516 |
| Mississippi | 0.000 | 0 | 0 | 0 |
| Missouri | 0.000 | 0 | 459 | 233 |

TABLE 13—INSTALLED WIND ENERGY GENERATION CAPACITY BY STATE WITHIN THE U.S. RANGE OF THE RED KNOT (INCLUDING INTERIOR MIGRATION PATHWAYS), 1999 AND 2012 (DOE 2012).—Continued

[U.S. average turbine size was 1.97 MW in 2011, up from 0.89 MW in 2000 (University of Michigan 2012, p. 1). We divided the megawatts by these average turbine sizes to estimate the numbers of turbines.]

| State | 1999 | | 2012 | |
|---|---|---|---|---|
| | Megawatts | Estimated number of turbines | Megawatts | Estimated number of turbines |
| Montana | 0.100 | 1 | 645 | 327 |
| Nebraska | 2.820 | 3 | 459 | 233 |
| New Hampshire | 0.050 | 0 | 171 | 87 |
| New Jersey | 0.000 | 0 | 9 | 5 |
| New York | 0.000 | 0 | 1,638 | 831 |
| North Carolina | 0.000 | 0 | 0 | 0 |
| North Dakota | 0.390 | 1 | 1,679 | 852 |
| Ohio | 0.000 | 0 | 426 | 216 |
| Oklahoma | 0.000 | 0 | 3,134 | 1,591 |
| Pennsylvania | 0.130 | 1 | 1,340 | 680 |
| Rhode Island | 0.000 | 0 | 9 | 5 |
| South Carolina | 0.000 | 0 | 0 | 0 |
| South Dakota | 0.000 | 0 | 784 | 398 |
| Tennessee | 0.000 | 0 | 29 | 15 |
| Texas | 183.520 | 206 | 12,212 | 6,199 |
| Vermont | 6.050 | 7 | 119 | 60 |
| Virginia | 0.000 | 0 | 0 | 0 |
| West Virginia | 0.000 | 0 | 583 | 296 |
| Wisconsin | 22.980 | 26 | 649 | 329 |
| Wyoming | 72.515 | 81 | 1,410 | 716 |
| Total | 828.465 | 931 | 45,643 | 23,169 |

Although avian impacts from land-based wind turbines are generally better documented than in the offshore environment, relatively little shorebird-specific information is available. Compiling estimated mortality rates from nine U.S. wind facilities (including four in California), Erickson *et al.* (2001, pp. 2, 37) calculated an average of 2.19 avian fatalities per turbine per year for all bird species combined, and found that shorebirds constituted only 0.2 percent of the total. Compiling 18 studies around the Great Lakes from 1999 to 2009, Akios (2011, pp. 9–10) found that mortality estimates for all species combined ranged from 0.4 to nearly 14 birds per turbine per year. Shorebirds accounted for 4.3 percent of the total at inland sites (nine studies at six sites), but accounted for only about 1.5 percent of the total at sites closer to the lakeshores (five studies at four sites) (Akios 2011, p. 14). Studies from Europe and New Jersey also suggest generally low collision susceptibility for shorebirds at coastal wind turbines (Normandeau Associates, Inc. 2011, p. 201).

Even in coastal states, most of the wind capacity installed to date is located along interior ridgelines or other areas away from the coast. With operations starting in 2005 (Atlantic County Utilities Authority 2012, p. 1), the 7.5–MW Jersey Atlantic Wind Farm was the first coastal wind farm in the United States (New Jersey Clean Energy Program undated). Located outside of Atlantic City, New Jersey (about 2 mi (3.2 km) inland from the nearest sandy beach, and surrounded by tidal marsh), the facility consists of five 380-ft (116-m) turbines (Atlantic County Utilities Authority 2012, p. 1). The New Jersey Audubon Society (NJAS (also known as New Jersey Audubon) 2009, entire; NJAS 2008a, entire; NJAS 2008b, entire) reported raw data from carcass searches conducted around the turbines. These figures have not yet been adjusted for observer efficiency, scavenger removal, or lack of searching in restricted-access areas, all of which would increase estimates of collision mortality (NJAS 2009, p. 2). In 3 years of searching, 38 carcasses from 25 species were attributed to turbine collision (NJAS 2009, pp. 2–3), or about 2.5 collisions per turbine per year. Of these, three carcasses (about eight percent) were shorebirds, and none were red knots (NJAS 2009, p. 3; NJAS 2008a, p. 5; NJAS 2008b, p. 9).

Considerable wind facility development has occurred in recent years near the Texas coast, south of Corpus Christi, and in the Mexican State of Tamaulipas; many additional wind energy projects are proposed in this region (Newstead *et al.* in press). As of 2011, coastal wind installations in Texas totaled more than 1,200 MW, or about 13 to 15 percent of the Statewide total (Reuters 2011). Kuvlesky *et al.* (2007, pp. 2487, 2492–2493) identified the lower Gulf coast of Texas as a region where wind energy development may have a potentially negative effect on migratory birds. Onshore wind energy development in the area of Laguna Madre may expose red knots to direct and indirect impacts during daily or seasonal movements (Newstead *et al.* in press). Shorebirds departing the coast for destinations along the central flyway (see the ''Migration—Northwest Gulf of Mexico'' section of the Rufa Red Knot Ecology and Abundance supplemental document) may be at some risk from wind projects throughout the flyway, but especially those that are adjacent to the coast where birds on a northbound departure may not have reached sufficient altitude to clear turbine height before reaching migration altitude (Newstead *et al.* in press).

Wind Energy—Summary

We analyzed shorebird mortality at land-based wind turbines in the United States, and we considered the red knot's vulnerability factors for collisions with offshore wind turbines that we expect will be built in the next few decades. We have no information regarding wind energy development in other countries. Based on our analysis of wind energy development in the United States, we expect ongoing improvements in turbine siting, design, and operation will help minimize bird collision hazards. However, we also expect cumulative avian collision mortality to increase

through 2030 as the number of turbines continues to grow, and as wind energy development expands into coastal and offshore environments. Shorebirds as a group have constituted only a small percentage of collisions with U.S. turbines in studies conducted to date, but wind development along the coasts (where shorebirds might be at greater risk) did not begin until 2005.

We are not aware of any documented red knot mortalities at any wind turbines to date, but low levels of red knot mortality from turbine collisions may be occurring now based on the number of turbines along the red knot's migratory routes (table 13) and the frequency with which red knots traverse these corridors. Based on the current number and geographic distribution of turbines, if any such mortality is occurring, it is likely not causing subspecies-level effects. However, as buildout of offshore, coastal, and inland wind energy infrastructure progresses, increasing mortality from turbine collisions may contribute to a subspecies-level effect due to the red knot's vulnerability to direct human-caused mortality. We anticipate that the threat to red knots from wind turbines will be primarily related to collision or behavioral changes during migratory or daily flights. Unless facilities are constructed at key stopover or wintering habitats, we do not expect wind energy development to cause significant direct habitat loss or degradation or displacement of red knots from otherwise suitable habitats.

Factor E—Conservation Efforts

There are many components of Factor E, some of which are being partially managed through conservation efforts. For example, the reduced availability of horseshoe crab eggs from the past overharvest of crabs in Delaware Bay is currently being managed through the ASMFC's ARM framework (see Reduced Food Availability, above, and supplemental document—Factor D). This conservation effort more than others is likely having the greatest effect on the red knot subspecies as a whole because a large majority of the birds move through Delaware Bay during spring migration and depend on a superabundant supply of horseshoe crab eggs for refueling. Other factors potentially influencing horseshoe crab egg availability are outside the scope of the ARM, but some are being managed. For example, enforcement is ongoing to minimize poaching, and steps are being implemented to prevent the importation of nonnative horseshoe crab species that could impact native populations. Despite the ARM and other conservation efforts, horseshoe crab population growth has stagnated for unknown reasons, some of which (e.g., possible ecological shifts) may not be manageable. See Factor A regarding threats to, and conservation efforts to maintain, horseshoe crab spawning habitat.

Some threats to the red knot's other prey species (mainly mollusks) are being partially addressed. For example, the Service is working with partners to minimize the effects of shoreline stabilization projects on the invertebrate prey base for shorebirds (e.g., Rice 2009, entire), and management of ORVs is protecting the invertebrate prey resource in some areas. Other likely threats to the red knot's mollusk prey base (e.g., ocean acidification; warming coastal waters; marine diseases, parasites, and invasive species) cannot be managed at this time, although efforts to minimize ballast water discharges in coastal areas likely reduce the potential for introduction of new invasive species.

Other smaller-scale conservation efforts implemented to reduce Factor E threats include beach recreation management to reduce human disturbance, gull species population monitoring and management in Delaware Bay, research into HAB control, oil spill response plan development and implementation, sewage treatment in Río Gallegos (Argentina), and national and state wind turbine siting and operation guidelines. In contrast, no known conservation actions are available to address asynchronies during the annual cycle.

Factor E—Summary

Factor E includes a broad range of threats to the red knot. Reduced food availability at the Delaware Bay stopover site due to commercial harvest of the horseshoe crab is considered a primary causal factor in the decline of rufa red knot populations in the 2000s. Under the current management framework (the ARM), the present horseshoe crab harvest is not considered a threat to the red knot, but it is not yet known if the horseshoe crab egg resource will continue to adequately support red knot populations over the next 5 to 10 years. Notwithstanding the importance of the horseshoe crab and Delaware Bay, the red knot faces a range of ongoing and emerging threats to its food resources throughout its range, including small prey sizes from unknown causes, warming water and air temperatures, ocean acidification, physical habitat changes, possibly increased prevalence of disease and parasites, marine invasive species, and burial and crushing of invertebrate prey from sand placement and recreational activities.

In addition, the red knot's life-history strategy makes this species inherently vulnerable to mismatches in timing between its annual cycle and those periods of optimal food and weather conditions upon which it depends. The red knot's sensitivity to timing asynchronies has been demonstrated through a population-level response, as the late arrivals of birds in Delaware Bay is generally accepted as a key causative factor (along with reduced supplies of horseshoe crab eggs) behind population declines in the 2000s. The factors that caused delays in the spring migrations of red knots from Argentina and Chile are still unknown, and we have no information to indicate if this delay will reverse, persist, or intensify. Superimposed on the existing threat of late arrivals in Delaware Bay are new threats emerging due to climate change, such as changes in the timing of reproduction for both horseshoe crabs and mollusks. Climate change may also cause shifts in the period of optimal arctic insect and snow conditions relative to the time period when red knots currently breed. The red knot's adaptive capacity to deal with numerous changes in the timing of resource availability across its geographic range is largely unknown. A few examples suggest some flexibility in red knot migration strategies, but differences between the annual timing cues of red knots (at least partly celestial and endogenous) and their prey (primarily environmental) suggest there are limitations on the adaptive capacity of red knots to cope with increasing frequency or severity of asynchronies.

Other threats are likely to exacerbate the effects of reduced prey availability and asynchronies, including human disturbance, competition with gulls, and behavioral changes from wind energy development. Additional threats are likely to increase the levels of direct red knot mortality, such as HABs, oil spills and other contaminants, and collisions with wind turbines. In addition to elevating background mortality rates, these three threats pose the potential for a low-probability but high-impact event if a severe HAB or major oil or contaminant spill occurs when and where large numbers of red knots are present, or if a mass-collision event occurs at wind turbines during migration. Based on our review of the best scientific and commercial data available, the subspecies-level impacts from Factor E components are already occurring and are anticipated to continue and possibly increase into the future.

Cumulative Effects from Factors A through E

Cumulative means an increase in quantity, degree, or force by successive addition. Synergy means the interaction of elements that, when combined, produce a total effect that is greater than the sum of the individual elements. Red knots face a wide range of threats across their range on multiple geographic and temporal scales. The effects of some smaller threats may act in an additive fashion to ultimately impact populations or the subspecies as a whole (cumulative effects). Other threats may interact synergistically to increase or decrease the effects of each threat relative to the effects of each threat considered independently (synergistic effects).

An example of cumulative effects comes from local or regional sources of typically low-level but ongoing direct mortality, such as from hunting, normal levels of parasites and predation, stochastic weather events, toxic HAB events, oil pollution, and collisions with wind turbines. We have no evidence that any of these mortality sources individually are impacting red knot populations, but taken together, the cumulative effect of these threats may potentially aggravate population declines, or slow population recoveries, particularly since modeling has suggested that the red knot is inherently vulnerable to direct human-caused mortality (Watts 2010, p. 39). Red knots by nature flock together within wintering areas and at critical migration stopovers. Surveys indicate that red knot populations using Tierra del Fuego and Delaware Bay have decreased by about 75 percent since the 1980s. As a result, flocks of several hundred to a thousand birds now represent a greater proportion of the total red knot population than in the past. Natural or anthropogenic stochastic events affecting these flocks can, therefore, be expected to have a greater impact on the red knot subspecies as a whole than in the past.

An example of a localized synergistic effect is increased beach cleaning following a storm, HAB event, or oil spill. Red knots and their habitats can be impacted by both the initial event, and then again by the cleanup activities. Sometimes such response efforts are necessary to minimize the birds' exposure to toxins, but nonetheless cause further disturbance and possibly alter habitats (e.g., N. Douglass pers. comm. December 4, 2006). Where storms occur in areas with hard stabilization structures, they are likely to cause net losses of habitat. In a synergistic effect, these same storms can also trigger or accelerate human efforts to stabilize the shoreline, further affecting shorebird habitats as discussed under Factor A. In addition to causing direct mortality and prompting human response actions, storm, oil spill, or HAB events can interact synergistically with several other threats, for example, exacerbating ongoing problems with habitat degradation or food availability through physical or toxic effects on habitat or prey species.

Modeling the effect of winds on migration in *Calidris canutus canutus,* Shamoun-Baranes *et al.* (2010, p. 285) found that unpredictable winds affect flight times and that wind is a predominant driver of the use of an intermittently used emergency stopover site. This study points to the interactions between weather and habitat. The somewhat uncertain but nevertheless likely threat to red knots from changing frequency, intensity, geographic paths, or timing of coastal storms could have a synergistic effect with loss or degradation of stopover habitats (e.g., changing storm patterns could intensify the red knot's need for a robust network of stopover sites). Likewise, encounters with more frequent, severe, or aberrant storms during migration might not only exact some direct mortality and the energetic costs (to survivors) of extra flight miles, but also could induce red knots to increase their use of stopover habitats in areas where shorebird hunting is still practiced (Nebel 2011, p. 217).

Reduced food availability has also been shown to interact synergistically with asynchronies and several other threats. Escudero *et al.* (2012, p. 362) have suggested that declining prey quality in South American wintering areas may be a partial explanation for the increasing proportion of red knots arriving late in Delaware Bay in the 2000s. In turn, the best available data indicate that late arrivals in Delaware Bay were a key factor that acted synergistically with depressed horseshoe crab egg supplies, and together these two factors constitute the most well-supported explanation for red knot population declines in the 2000s (Niles *et al.* 2008, p. 2; Atkinson *et al.* 2007, p. 892; Baker *et al.* 2004, p. 878; Atkinson *et al.* 2003b, p. 16). Further synergistic effects in Delaware Bay affecting red knot weight gain have also been noted among food availability, ambient weather, storms, habitat conditions, and competition with gulls (Dey *et al.* 2011a, p. 7; Breese 2010, p. 3; Niles *et al.* 2005, p. 4). Philippart *et al.* (2003, p. 2171) concluded that prolonged periods of lowered bivalve recruitment and stocks due to rising water temperatures may lead to a reformulation of estuarine food webs and possibly a reduction of the resilience of the system to additional disturbances, such as shellfish harvest. Modeling by van Gils *et al.* (2005a, p. 2615) showed that, by selecting stopovers containing high-quality prey, *Calidris canutus* of various subspecies kept metabolic rates at a minimum, potentially reducing the spring migratory period by a full week; thus, not only can asynchronies cause red knots to arrive when food supplies are suboptimal, but so can suboptimal prey quality at a stopover cause an asynchrony for the next leg of the migratory journey (e.g., by delaying departure until adequate weight has been gained).

While direct predation by peregrine falcons may account for only minor losses of individual birds, observations by shorebird biologists in Virginia, Delaware, and New Jersey have found that the presence of peregrine falcons significantly affects red knot foraging patterns, causing birds to abandon or avoid beaches that otherwise would be used for foraging. During times of limited food availability, this disturbance could reduce the proportion of red knots that can attain sufficient weight for successful migration and breeding in the Arctic. As with predation, human disturbance can also have a synergistic effect with reduced food availability. The combined effects of these two threats (food availability and disturbance) at one key wintering site (Río Grande, Argentina, in Tierra del Fuego) caused the red knot's energy intake rate to drop from the highest known for red knots anywhere in the world in 2000, to among the lowest in 2008 (Escudero et al. 2012, pp. 359–362). Especially when food resources are limited, human disturbance can also exacerbate competition in Delaware Bay by giving a competitive advantage to gull species, which return to foraging more quickly than shorebirds do, following a flight response to vehicles, people, or dogs (Burger *et al.* 2007, p. 1164). Shorebirds can tolerate more disturbance before their fitness levels are reduced when feeding conditions are favorable (e.g., abundant prey, mild weather) (Niles *et al.* 2008, p. 105; Goss-Custard *et al.* 2006, p. 88).

In Delaware Bay, the potential exists for an unlikely but, if it occurred, high-impact synergistic effect among disease, environmental contaminants, and climate change. Because Delaware Bay is a known hotspot for low pathogenicity avian influenza (LPAI) among shorebirds, this region may act as

a place where novel avian viruses (potentially including high pathogenicity (HP) forms) can amplify and subsequently spread in North America (Brown *et al.* 2013, p. 2). The Delaware River and Bay are also contaminated with PCBs (Suk and Fikslin 2006, p. 5), which are known to suppress the immune systems in waterbirds, such as herring gulls and black-crowned night herons (*Nycticorax nycticorax*) (Grasman *et al.* 2013 pp. 548, 559). If resident Delaware Bay birds are immunosuppressed by PCB tissue concentrations (which is unknown but possible), the potential exists for resident bird species such as mallards (*Anas platyrhynchos*) (Fereidouni *et al.* 2009, pp. 1, 6) or herring gulls (Brown *et al.* 2008, p. 394) to more easily acquire a virulent HPAI, which could then be transmitted to red knots during the spring stopover. Health impacts and mortality from HPAI have been shown in *Calidris canutus islandica* (Reperant *et al.* 2011, entire) and can be presumed in the *rufa* subspecies. Such an occurrence would be likely to exact high mortality on red knots.

In mallards, Fereidouni *et al.* (2009, pp. 1, 6) found that prior exposure to LPAI conferred some immunity to HPAI and could, therefore, increase the risk of mallards transmitting virulent forms of the disease (i.e., they tend to survive the HPAI and, therefore, can spread it). Olsen *et al.* (2006, p. 388) suggested that many wild bird species may be partially immune to HPAI due to previous exposure to LPAI, enhancing their potential to carry HPAI to previously unaffected areas. The applicability of this finding to shorebirds is unknown, but this finding suggests that species with high rates of LPAI (e.g. ruddy turnstone, mallards (Brown *et al.* 2013, p. 2)) could be at higher risk of transmitting HPAI, while red knots (with low rates of LPAI) could be more likely to die from HPAI, if exposed. Further, modeling has suggested that, if climate change leads to mismatches between the phenology of ruddy turnstones (the main LPAI carriers) and horseshoe crab spawning, the prevalence of LPAI in turnstones would be projected to increase even as their population size decreased (Brown and Rohani 2012, p. 1). Although the risk of a PCB-mediated HPAI outbreak in Delaware Bay is currently unquantifiable, the findings of Brown and Rohani (2012, p. 1) suggest that this risk could be increased by climate change (e.g., by further increasing LPAI infection rates among ruddy turnstones and thereby enhancing their potential to survive and subsequently spread HPAI, should it occur).

In the Arctic, synergistic interactions are expected to occur among shifting vegetation communities, loss of sea ice, changing relationships between red knots and their predators and competitors, and the timing of snow melt and insect emergence. Such changes are superimposed on the red knot's breeding season that naturally has very tight tolerances in time and energy budgets due to the harsh tundra conditions and the knot's exceptionally long migration. High uncertainty exists about when and how such synergistic effects may affect red knot survival or reproduction, but the impacts are potentially profound (Fraser *et al.* 2013, entire; Schmidt *et al.* 2012, p. 4421; Meltofte *et al.* 2007, p. 35; Ims and Fuglei 2005, entire; Piersma and Lindström 2004, entire; Rehfisch and Crick 2003, entire; Piersma and Baker 2000, entire; Zöckler and Lysenko 2000, entire; Lindström and Agrell 1999, entire). For example, as conditions warm, vegetative conditions in the current red knot breeding range are likely to become increasingly dominated by trees and shrubs over the next century. It is unknown if red knots will respond to vegetative and other ecosystem changes by shifting their breeding range north, where they could face greater energetic demands of a longer migration, competition with *Calidris canutus islandica,* and possibly no reduction in predation pressure if predator densities also shift north as temperatures warm. Alternatively, red knots may attempt to adapt to changing conditions within their current breeding range, where they could face unfavorable vegetative conditions and a new suite of predators and competitors expanding northward.

**Determination**

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (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.

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the rufa red knot. We have identified threats to the red knot attributable to Factors A, B, C, and E. The primary driving threats to the red knot are from habitat loss and degradation due to sea level rise, shoreline stabilization, and Arctic warming (Factor A), and reduced food availability and asynchronies in the annual cycle (Factor E). Other threats are moderate in comparison to the primary threats; however, cumulatively, they could become significant when working in concert with the primary threats if they further reduce the species' resiliency. These secondary threats include hunting (Factor B); predation (Factor C); and human disturbance, harmful algal blooms, oil spills, and wind energy development (Factor E). All of these factors affect red knots across their current range.

Conservation efforts are being implemented in many areas of the red knot's range (see Factors A, B, C, and E). For example, in 2012, the ASMFC adopted the ARM for the management of the horseshoe crab population in the Delaware Bay Region to meet the dual objectives of maximizing crab harvest and meeting red knot population targets (ASMFC 2012e, p. 1). In addition, regulatory mechanisms exist that provide protections for the red knot directly (e.g., MBTA protections against take for scientific study or by hunting) or through regulation of activities that threaten red knot habitat (e.g., section 404 of the Clean Water Act, Rivers and Harbors Act, Coastal Barrier Resources Act, and Coastal Zone Management Act, and State regulation of shoreline stabilization and coastal development) (see supplemental document—Factor D). While these conservation efforts and existing regulatory mechanisms reduce some threats to the red knot, significant risks to the subspecies remain.

Red knots migrate annually between their breeding grounds in the Canadian Arctic and several wintering regions, including the Southeast United States, the Northeast Gulf of Mexico, northern Brazil, and Tierra del Fuego at the southern tip of South America. During both the spring and fall migrations, red knots use key staging and stopover areas to rest and feed. This life-history strategy makes this species inherently vulnerable to numerous changes in the timing of quality food and habitat resource availability across its geographic range. While a few examples suggest the species has some flexibility in migration strategies, the full scope of

the species' adaptability to changes in its annual cycle is unknown.

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 find that the rufa red knot meets the definition of a threatened species due to the likelihood of habitat loss driven by climate change and human response to climate change and reduced food resources and further asynchronies in its annual cycle that result in the species' reduced redundancy, resiliency, and representation. While there is uncertainty as to how long it may take some of the climate-induced changes to manifest in population-level effects to the rufa red knot, we find that the best available data suggests the rufa red knot is not at a high risk of a significant decline in the near term. However, should the reduction in redundancy, resiliency, and representation culminate in an abrupt and large loss, or initiation of a steep rate of decline, of reproductive capability or we subsequently find that the species does not have the adaptive capacity to adjust to actual shifts in its food and habitat resources, then the red knot would be at higher risk of a significant decline in the near term, and thus would meet the definition of an endangered species under the Act. We base this determination on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial data, we propose listing the rufa red knot as a threatened species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it meets the definition of an endangered or threatened species throughout all or a significant portion of its range. The rufa red knot proposed for listing in this rule is wide-ranging and the threats occur throughout its range. Therefore, we assessed the status of the subspecies throughout its entire range. The threats to the survival of the subspecies are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the subspecies throughout its entire range.

*Available Conservation Measures*

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

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

Recovery planning includes the development of a recovery outline shortly after a species is listed 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 final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our New Jersey Fish and Wildlife 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, Tribes, 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 ranges may occur primarily or solely on non-Federal lands. Recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If 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, States regularly inhabited by rufa red knots during the wintering or stopover periods would be eligible for Federal funds to implement management actions that promote the protection or recovery of the rufa red knot. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the rufa red knot is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species 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 landscape altering activities on Federal lands administered by the Department of Defense, the Service, and NPS; issuance of section 404 Clean Water Act permits and shoreline stabilization projects implemented by the USACE; construction and management of gas pipeline rights-of-way by the Federal Energy Regulatory Commission; leasing of Federal waters by the BOEM for the construction of wind turbines; 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 17.22 for endangered species, and at 17.32 for threatened species. 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.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the potential effect of a listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the rufa red knot, or that cause declines of the red knot's prey species;

(3) Unauthorized modification of intertidal habitat that regularly support concentrations of rufa red knots during the wintering or stopover periods; and

(4) Unauthorized discharge of chemicals or fill material into any waters along which the rufa red knot is known to occur.

(1) The following activities are not likely to result in a violation of section 9 of the Act; this list is not comprehensive: Harvest of horseshoe crabs in accordance with the ARM, provided the ARM is implemented as intended (e.g., including implementation of necessary monitoring programs), and enforced.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New Jersey Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 300 Westgate Center Drive, Hadley, MA, 01035 (telephone 413–253–8615; facsimile 413–253–8482).

Under section 4(d) of the Act, the Secretary has discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.31) for threatened wildlife generally incorporate the prohibitions of section 9 of the Act for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.31 would not apply to that species, and instead, the special rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. The Secretary also has the discretion to prohibit by regulation with respect to a threatened species any act prohibited by section 9(a)(1) of the Act. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species in 50 CFR 17.31 and exceptions to those prohibitions in 50 CFR 17.32. We are not proposing to promulgate a special section 4(d) rule, and as a result, all of the section 9 prohibitions, including the ''take'' prohibitions, will apply to the rufa red knot. (As described above, harvest of horseshoe crabs in accordance with the ARM is not likely to result in take under section 9 of the Act.)

Listing the rufa red knot under the Act would invoke provisions under various State laws that would prohibit take and encourage conservation by State government agencies. Further, States may enter into agreements with Federal agencies to administer and manage areas required for the conservation, management, enhancement, or protection of endangered species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species will be reinforced and supplemented by protection under State law.

A determination to list the rufa red knot as a threatened species under the Act, if we ultimately determine that listing is warranted, will not regulate greenhouse gas emissions. Rather, it will reflect a determination that the rufa red knot meets the definition of a threatened species under the Act, thereby establishing certain protections for it under the Act. While we acknowledge that listing will not have a direct impact on those aspects of climate change impacting the rufa red knot (e.g., sea level rise, ocean acidification, warming coastal waters, changing patterns of coastal storm activity, warming of the Arctic), we expect that listing will indirectly enhance national and international cooperation and coordination of conservation efforts, enhance research programs, and encourage the development of mitigation measures that could help slow habitat loss and population declines. In addition, the development of a recovery plan will guide efforts intended to ensure the long-term survival and eventual recovery of the rufa red knot.

## Required Determinations

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, New Jersey Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Authors

The primary authors of this proposed rule are the staff members of the New Jersey Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## List of Subjects in 50 CFR Part 17

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

## Proposed Regulation Promulgation

Accordingly, we propose to 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; 4201–4245; unless otherwise noted.

■ 2. In § 17.11(h) add an entry for ''Knot, rufa red'' to the List of Endangered and Threatened Wildlife in alphabetical order under Birds to read as set forth below:

**§ 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 | | | | | | |
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| BIRDS | | | | | | | |
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| Knot, rufa red ... | *Calidris canutus ssp. rufa.* | Argentina, Aruba, Bahamas, Barbados, Belize, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, France (Guadeloupe, French Guiana), Guatemala, Guyana, Haiti, Jamaica, Mexico, Panama, Paraguay, Suriname, Trinidad and Tobago, Uruguay, Venezuela, U.S.A. (AL, AR, CT, CO, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NE, NC, ND, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY, Puerto Rico, U.S. Virgin Islands). | Entire ..... | T | ..... | N/A | N/A |
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Dated: September 6, 2013.

**Rowan W. Gould,**

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

[FR Doc. 2013–22700 Filed 9–27–13; 8:45 am]

BILLING CODE 4310–55–P

# FEDERAL REGISTER

Vol. 78 Monday,

No. 189 September 30, 2013


Part III

## Department of Homeland Security

Coast Guard

33 CFR Parts 151, 155, and 160

Nontank Vessel Response Plans and Other Response Plan Requirements; Final Rule

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR parts 151, 155, and 160**

**[Docket No. USCG–2008–1070]**

**RIN 1625–AB27**

## Nontank Vessel Response Plans and Other Response Plan Requirements

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security, U.S. Coast Guard, is promulgating this nontank vessel response plan final rule to further protect the Nation from the threat of oil spills in U.S. waters. This final rule requires owners or operators of nontank vessels to prepare and submit oil spill response plans. The Federal Water Pollution Control Act defines nontank vessels as self-propelled vessels of 400 gross tons or greater that operate on the navigable waters of the United States, carry oil of any kind as fuel for main propulsion, and are not tank vessels. This final rule specifies the content of a response plan and addresses, among other issues, the requirement to plan for responding to a worst case discharge and a substantial threat of such a discharge. Additionally, this final rule updates the international Shipboard Oil Pollution Emergency Plan requirements that apply to certain nontank vessels and tank vessels. Finally, this final rule requires vessel owners or operators to submit their vessel response plan control number as part of already required notice of arrival information. This rulemaking supports the Coast Guard's strategic goals of protection of natural resources and maritime mobility.

**DATES:** This final rule is effective October 30, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on October 30, 2013.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1070 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2008–1070 in the ''Keyword'' box, and then clicking ''Search.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Peterson, Coast Guard, Office of Commercial Vessel Compliance, Vessel Response Plan Review Team; telephone 202–372–1226, email *vrp@uscg.mil.* If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

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## I. Abbreviations

2004 Act Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108–293, 118 Stat. 102)
2006 Act Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241, 120 Stat. 516)
ACP Area Contingency Plan
AMPD Average most probable discharge
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FOSC Federal On-Scene Coordinator
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
FWPCA Federal Water Pollution Control Act (33 U.S.C. 1251 through 1387)
GSA Geographic-Specific Appendix
IMO International Maritime Organization
IRFA Initial Regulatory Flexibility Analysis
ISM International Ship Management
MARPOL International Convention for the Prevention of Pollution From Ships
MEPC Marine Environment Protection Committee
NAICS North American Industry Classification System
NCP National Oil and Hazardous Substances Pollution Contingency Plan (also known as National Contingency Plan)
NM Nautical Mile
NOA Notice of arrival
NPRM Notice of proposed rulemaking
NTVRP Nontank vessel response plan
NVIC Navigation and Vessel Inspection Circular
OCS Outer continental shelf
OMB Office of Management and Budget
OPA 90 Oil Pollution Act of 1990 (Pub. L. 101–380, 104 Stat 484)
OSRO Oil spill removal organization
P&I Protection and Indemnity
PWSA Ports and Waterways Safety Act (Pub. L. 92–340, 86 Stat. 424)
QI Qualified individual

RFA Regulatory Flexibility Act
SBA Small Business Administration
§ Section symbol
SLS Saint Lawrence Seaway
SLSDC Saint Lawrence Seaway Development Corporation
SOPEP Shipboard oil pollution emergency plans
SMT Spill management team
STS Guide Ship to Ship Transfer Guide (Petroleum), Fourth Edition, 2005
U.S.C. United States Code
VRP Vessel response plan
WCD Worst case discharge

## II. Executive Summary and Regulatory History

### *A. Executive Summary*

#### 1. Purpose and Authority

This rule implements the statutory requirement for an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, to prepare and submit an oil spill response plan to the Coast Guard. Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)(5)), as amended by section 4202 of the Oil and Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat 484); the Coast Guard and Maritime Transportation Act of 2004 (the 2004 Act) (Pub. L. 108–293, 118 Stat. 102); and the Coast Guard and Maritime Transportation Act of 2006 (the 2006 Act) (Pub. L. 109–241, 120 Stat. 516) sets out the statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States.

#### 2. Overview of Rule

This rule, which adds new 33 CFR part 155, subpart J, Nontank Vessel Response Plans (33 CFR 155.5010–155.5075) and revises portions of 33 CFR parts 151, 155 and 160, specifies the content of a vessel response plan (VRP), including the requirement to plan for responding to a worst case discharge (WCD) and a substantial threat of such a discharge as mandated in statute. The rule also specifies the procedures for submitting a VRP to the Coast Guard. This rule will improve our nation's pollution response planning and preparedness posture, and help limit the environmental damage resulting from nontank vessel marine casualties.

#### 3. Costs and Benefits

The NTVRP final rule cost is borne by the estimated 12,000+ nontank vessel users of our Nation's waterways, with foreign-flag vessels comprising the majority of the vessels affected. The costs are also spread between U.S. and foreign nontank vessels. Approximately 40 percent of this final rule's $263 million 10-year cost is borne by domestic vessel owners/operators.

The NTVRP final rule benefits are both qualitative and quantitative. The qualitative benefits are ensuring the ability to respond effectively to oil spills, including a worst case discharge, and improving effectiveness of shore-side and onboard response activities. The quantitative benefits are preventing between 2,014 and 2,446 barrels of oil from being spilled over the 10-year period of analysis.

### *B. Regulatory History*

On August 31, 2009, we published a notice of proposed rulemaking (NPRM) entitled Nontank Vessel Response Plans and Other Response Plans Requirements in the **Federal Register** (74 FR 49970). We received 30 comment letters on the proposed rule. On September 25, 2009, we published a notice of public meetings (74 FR 48891) that announced three public meetings. We scheduled the meetings to receive comments on the NPRM in order to allow for greater public involvement. The meetings were held in—

- Washington, DC, on October 28, 2009;
- Oakland, CA, on November 3, 2009; and
- New Orleans, LA, on November 19, 2009.

At the three public meetings, we heard from 8 speakers. In total, between the 30 comment letters and 8 speakers we received approximately 190 individual comments.

## III. Basis and Purpose

### *General*

Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)(5)), as amended by section 4202 of the Oil and Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat 484); the Coast Guard and Maritime Transportation Act of 2004 (the 2004 Act) (Pub. L. 108–293, 118 Stat. 102); and the Coast Guard and Maritime Transportation Act of 2006 (the 2006 Act) (Pub. L. 109–241, 120 Stat. 516) sets out the statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States. This rule implements the statutory requirement for an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, to prepare and submit an oil spill response plan to the Coast Guard.

Per 33 U.S.C. 1321(j)(5)(D)(i–iv), a response plan must:

- Be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;
- Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment;
- Identify, and ensure by contract or other approved means the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge; and
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge.

This rule, which adds new 33 CFR part 155, subpart J, Nontank Vessel Response Plans (33 CFR 155.5010–155.5075) and revises portions of 33 CFR parts 151, 155 and 160, specifies the content of a vessel response plan (VRP), including the requirement to plan for responding to a worst case discharge (WCD) and a substantial threat of such a discharge as mandated in statute. The rule also specifies the procedures for submitting a VRP to the Coast Guard. This rule will improve our nation's pollution response planning and preparedness posture, and help limit the environmental damage resulting from nontank vessel marine casualties.

### *Key Points About This Rulemaking*

This nontank vessel response plan (NTVRP) final rule implements a statutory mandate from the 2004 Act as amended by the 2006 Act. These statutes expanded response plan requirements from only tank vessels, for which regulations were initially issued in 1993, to also apply to nontank vessels. This expansion recognizes the significant increase in the quantity of petroleum and petroleum products carried as bunker for fuel and the potentially catastrophic consequences should a mishap result in tank breach. In fact, a significant number of today's

large nontank vessels carry more oil as fuel than many of the tank vessels did as cargo when the original tank vessel response plan requirements were promulgated. These statutorily-mandated requirements fill this regulatory gap and enhance the national oil response infrastructure.

The NTVRP requirements align to the maximum extent possible with the existing tank vessel response plan requirements, including common definitions and plan elements. However, while tank vessels must comply with all functional elements, we have tailored the requirements for some nontank vessels. This is best demonstrated in how required NTVRP planning elements (i.e., response services) are scaled to oil capacity. Thus, for smaller nontank vessels with commensurately smaller oil capacities, there are fewer NTVRP functional planning requirements. As such, the response services a nontank vessel owner or operator must plan for are scaled to the risk (i.e., oil capacity) of the vessel. Doing so allows us to minimize burden in carrying out the statutory mandate and focus on those vessels which present the greatest risk to the environment should a breach occur.

When fully implemented, the NTVRP final rule will serve as a useful tool for national preparedness. While the Coast Guard and the entire marine industry have worked successfully to reduce the risk of oil spills, marine casualties, accidental or not, will always be possible. Furthermore, spill volumes could be potentially catastrophic, as was seen in the case of the M/V SELENDANG AYU. In 2004, M/V SELENDANG AYU spilled about 336,000 gallons of its fuel when it ran aground off the coast of the environmentally sensitive Alaskan Aleutian islands. Similarly, in 1999 the M/V NEW CARISSA spilled about 70,000 gallons of fuel oil during a grounding on the Oregon coast that resulted in considerable environmental damage. The NTVRP final rule enhances our national preparedness posture by requiring the development and submission of oil spill response plans that cover thousands of U.S. and foreign vessels when operating on our Nation's waters. This pre-planning will create vital linkages between the shipping industry and oil spill response service providers (such as oil spill removal organizations (OSROs), salvage companies, and marine firefighting companies), ensuring that mechanisms are in place to immediately respond to an emergency. Pre-planning may also drive an increase in capacity of this vital response service infrastructure. This infrastructure would be available not only for a maritime accident, but also to respond to a natural disaster.

The NTVRP final rule cost is borne by the estimated 12,000+ nontank vessel users of our Nation's waterways, with foreign-flag vessels comprising about 75 percent of the total number of vessels affected. The costs are also spread between U.S. and foreign nontank vessels. Approximately 60 percent of this final rule's $263 million 10-year cost is borne by foreign vessel owners/operators.

For this rulemaking, the Coast Guard published an NPRM with a 90-day comment period, and held 3 public meetings around the country. We received 30 comment letters containing about 190 individual comments. While many commenters questioned why their nontank vessels should be required to comply (a statutory mandate), few commenters focused on cost. The majority of comments were suggestions to improve the requirements. To ease the burden on small nontank vessel owners and operators, at the NPRM stage we scaled the required functional planning elements (i.e., response services) to the risk (i.e., oil capacity) of the vessel. In response to NPRM public comments about the burden of training and exercise requirements, the Coast Guard further added an Alternative Training and Exercise Program to allow small vessel operations the ability to voluntarily develop and submit an alternative program. This optional program provides flexibility and may reduce economic impact on some small entities.

As an example of how the NTVRP final rule scales requirements to risk, the functional planning requirements for a nontank vessel with a large oil capacity (i.e., over 2,500 barrels or 100,000+ gallons) aligns with tank vessel response plan requirements. Over the past two decades, there has been considerable growth in the size of nontank vessels. Some nontank vessels now carry a volume of bunker oil equal to or greater than tank vessels that operated in our waters 20 years ago. It is important that nontank vessels that present this level of oil spill risk be required to plan for a worst case discharge (loss of all oil) while on our waterways, just as tank vessels must do.

In summary, the NTVRP final rule is a statutorily-mandated national preparedness document that enhances our oil spill response posture. The NTVRP final rule costs are shared between U.S. and foreign nontank vessels, and are scaled to risk. Public comment did not focus on cost, but rather on ways to improve the requirements.

## IV. Background

The Coast Guard intends this rule to improve our nation's pollution response planning and preparedness posture and help limit the environmental damage resulting from nontank vessel marine casualties. For a detailed Background discussion, see Section III of the NPRM (74 FR 44970, 44971), which is available in the public docket, where indicated under **ADDRESSES**. That document provides a summary of the following topics—

- Tank and Nontank Vessels—Oil and Hazardous Substance Discharge Response Plan Legislation;
- Tank Vessels;
- Nontank Vessels;
- Access to the Navigation and Vessel Inspection Circulars (NVICs);
- Shipboard Oil Pollution Emergency Plan (SOPEP);
- Notice of Arrival Requirements and Vessel Response Plans;
- Customary International Law: Innocent Passage and Transit Passage; and
- Definition of ''United States'' for Purposes of Vessel Response Plan Requirements.

Additionally, Section III of the NPRM contains a ''Discussion of Proposed Rule'' divided into two pieces. The first piece provides a broad overview of changes to our SOPEP regulations, tank vessel oil spill response plan regulations, nontank vessel oil spill response plan regulations, and notice of arrival regulations. The second piece, following the overview, discusses specific sections of the regulatory text.

To amplify the Background section in the NPRM, we provide the following discussion on jurisdiction.

### *Jurisdiction*

This rule applies in the navigable waters of the United States as defined in 33 CFR 2.36(b)(1), including the waters in 46 U.S.C. 2101(17a). The breadth of the territorial sea for purposes of this rule is as stated in 33 CFR 2.22(a)(1), i.e., 12 nautical miles (nm) from the baseline.

Foreign vessels subject to this rule must comply with all requirements in the rule, including the requirement to have a plan with a geographic-specific appendix (GSA) for all Captain of the Port (COTP) zones through which the vessel transits on its voyage to and from a U.S. port or place, e.g., lightering zone. Coastal COTP zones extend to the outer limits of the U.S. exclusive economic zone (EEZ). Thus, a foreign-flag vessel bound to or from a U.S. port or place

must have a GSA for each COTP zone through which the vessel transits on that voyage as required by 33 CFR 155.5035(i).

The requirement to have a GSA for each COTP zone through which the foreign vessel passes, on a voyage to or from a U.S. port or place, is not predicated on application of this rule to the outer limits of the EEZ. The requirement for a GSA for each COTP zone through which the foreign vessel transits, on its way to and from a U.S. port or place, exists because a foreign vessel that is subject to the requirements of the rule must comply with all such requirements of the port State consistent with international law. In the NPRM, we explained the international law allowing a port State to exercise jurisdiction over and apply its laws to foreign vessels in its ports. 74 FR 44973, August 31, 2009. We also explained the rights of foreign vessels and limits on the authority of a coastal State to impose its laws on such vessels, contained in the doctrines of innocent passage through the territorial sea and transit passage through straits used for international navigation. 74 FR 44973, August 31, 2009.

## V. Summary of Changes From NPRM

The Coast Guard revised a number of sections to alleviate the burden of the rule in response to public comments or to clarify requirements. Unless noted otherwise, the comments and the details of changes made in the final rule are discussed below in Section VI Discussion of Comments and Changes.

The Coast Guard revised the following sections to allow nontank owners or operators to submit their VRP electronically: §§ 151.27, 151.28, 155.1065, 155.1070, 155.5065, and 155.5070. For a more detailed discussion of this change, please see VI.A.13 Electronic copies—§§ 155.1030(i), 155.5030(g).

In response to comments, the Coast Guard revised paragraphs 151.28(h) and 155.5070(a) to remove the annual plan review reporting requirement.

The Coast Guard revised § 155.5010 to add a note to the section that states that additional oil spill planning standards are found in 30 CFR part 254 for nontank vessels that are mobile offshore drilling units.

The Coast Guard revised the following sections to clarify applicability for secondary carriers: §§ 155.1015 and 155.5015. For a more detailed discussion of this change, please see VI.A.1 Applicability.

The Coast Guard revised § 155.5025 to clearly state the requirements for one-time port waivers for remote areas. For a more detailed discussion of this change, please see VI.A.11 One-time port waivers § 155.5025.

The Coast Guard removed the revised definition ''vessels carrying oil as secondary cargo'' that we proposed in the NPRM in § 155.1020. Utilization of the description of a nontank vessel found at § 155.5015(a) for the applicability of these rules makes a separate definition redundant. The current definition for ''vessels carrying oil as secondary cargo'' defined in § 155.1020 will apply to new 33 CFR part 155, subpart J, as appropriate. For a more detailed discussion of this change, please see VI.A.5 Definitions §§ 155.1020, 155.5020.

The Coast Guard revised the definition for ''nontank vessels'' in §§ 155.1020 and 155.5020 for clarity and for purposes of consistency. Both of these definitions now utilize the description found in the applicability section provided in 33 CFR 155.5015(a). For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

In response to comments, the Coast Guard revised §§ 155.1030(i) and 155.5030(g) to allow vessels to carry electronic copies onboard. For a more detailed discussion of this change, please see VI.A.14 Portions of the plan carried on vessel—§§ 155.1030(i), 155.5030(g)(1).

In response to comments, the Coast Guard removed the words ''original'' and ''notarized'' from §§ 155.1030(i)(1), 155.1030(i)(2), and 155.5030(g). The Coast Guard will not require vessels to have original, notarized copies of the VRP onboard. For a more detailed discussion of this change, please see VI.A.13 Electronic copies—§§ 155.1030(i), 155.5030(g).

In response to comments, the Coast Guard amended the requirement to allow vessels to identify their insurance provider instead of insurance representatives in §§ 155.1035(e)(3) and 155.5035(e)(3). For a more detailed discussion of this change, please see VI.A.7 Insurance providers—§§ 155.1035(e)(3), 155.5035(e)(3).

In response to comments, the Coast Guard added the requirement that vessels must state their 24-hour point of contact/local agent before arriving in a port if they have not done so in their VRP in §§ 155.1035(e)(4) and 155.5035(e)(4). For a more detailed discussion of this change, please see VI.A.8—Local agent §§ 155.1035(e)(4), 155.5035(e)(4).

The Coast Guard revised §§ 155.1070 and 155.5075 to align appeal procedures between 33 CFR part 155, subpart D, Tank Vessel Response Plans for Oil and new 33 CFR part 155, subpart J, Nontank Vessel Response Plans.

In response to comments, the Coast Guard revised the following sections to clarify salvage and marine firefighting applicability for nontank vessels: §§ 155.4010, 155.4015, 155.4020, 155.4025, 155.4030, 155.4035, and 155.4052. For a more detailed discussion of these changes, please see VI.A.22 Salvage and marine firefighting resources—§ 155.5050(i).

In response to comments, the Coast Guard revised the definition of ''cargo'' in § 155.5020 for clarity. For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

The Coast Guard revised the definition of ''navigable waters of the United States'' in § 155.5020 for clarity and to ensure that the applicability of these rules, as mandated in statute, is understood.

In response to comments, the Coast Guard added the definition of ''transfer'' to § 155.5020. The Coast Guard added the definition to clarify that the term transfers means those that take place to and from vessels for the purposes of 33 CFR part 155, subpart J. For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

The Coast Guard revised the definition for ''worst case discharge'' (WCD) in § 155.5020 to maintain alignment between new subpart J and tank regulations in 33 CFR part 155, subpart D. The Coast Guard may change these requirements in a future rulemaking. For a more detailed discussion of this change, please see VI.A.5 Definitions—§§ 155.1020, 155.5020.

The Coast Guard revised the following sections to improve clarity: §§ 151.09, 151.26, 155.1015, 155.4010, 155.5015, 155.5020, 155.5023, 155.5025, 155.5030, 155.5035, 155.5050, and 155.5067. In these sections, the Coast Guard reworded sentences that might be confusing and broke up paragraphs into smaller paragraphs to make them easier to read. We also restructured the subparagraphs of §§ 155.5035(i), 155.5050(e), 155.5050(j), and 155.5050(k) to improve clarity.

The Coast Guard revised § 155.5030(d) to allow vessel owners or operators to submit one plan to represent multiple vessels, as this reduces administrative burden on the regulated entities and is consistent with earlier guidance of Navigation and Vessel Inspection Circular (NVIC) 01–05.

In response to comments, the Coast Guard amended § 155.5030(g)(1) to

require vessels to only carry those VRP sections onboard their vessels the Coast Guard deemed necessary to initiate notifications and crew response. For a more detailed discussion of this change, please see VI.A.14 Portions of plan carried on vessel—§§ 155.1030(i), 155.5030(g)(1).

In response to comments, the Coast Guard revised §§ 155.5055 and 155.5060 to clarify the new Alternative Training and Exercise Program. The Coast Guard created a new § 155.5061 to detail the new Alternative Training and Exercise Program. For a more detailed discussion of this change, please see VI.A.23 Training and Exercises—§§ 155.5055, 155.5060.

The Coast Guard revised §§ 155.5065 and 155.5075 to update the Coast Guard Headquarters' mailing address.

## VI. Discussion of Comments and Changes

The Coast Guard received 30 letters commenting on the proposed rule. The majority of these letters contained multiple comments. In total, we received approximately 190 individual comments. All comments and summaries of public meetings are available in the public docket for this rulemaking, where indicated under **ADDRESSES**.

Below, we summarize the comments received, by letter and at the public meetings, and the changes we made to the regulatory text in response. We discuss the items that address a specific section in the regulatory text first. We then discuss general items that relate to a topic not found in the regulatory text. Finally, we discuss miscellaneous comments and comments that are beyond the scope of this rulemaking project.

### *A. Regulatory Text Comments*

The Coast Guard received comments on specific regulatory text sections. Below we have organized the comments and our responses in order of regulatory text citation.

#### 1. Applicability—§§ 151.09, 155.5015

The Coast Guard received 21 comments on §§ 151.09 and 155.5015, Applicability. We have grouped the applicability comments into the following topics: General applicability, tonnage threshold, fuel amount, offshore supply vessels, fuel type, vessels built before 1982, and blue water (ocean going)/brown water (inland) vessels.

General Applicability

The Coast Guard received one comment on general applicability. The commenter stated that the statute does not require that the entirety of the tank vessel regulation necessarily be applied to all covered nontank vessels.

The Coast Guard agrees as reflected by this rulemaking. The law in 33 U.S.C. 1321(j)(5)(D) states that tank and nontank vessels must submit VRPs. The statutory definition does not detail the specific content of a VRP. The Coast Guard proposed and is now promulgating a separate NTVRP subpart (new 33 CFR part 155, subpart J) in recognition of, and in response to, the differences between nontank vessels and tank vessels.

Tonnage Threshold

The Coast Guard received four comments on the tonnage threshold.

Commenters stated that the tonnage threshold for NTVRP requirements should be 400 gross tons as measured under the domestic regulatory system, as opposed to the international system.

The Coast Guard understands the commenters' concerns. The tonnage threshold for NTVRP requirements may be measured under the domestic regulatory system if not measured under the convention measurement system. In July 2006, Congress amended the definition of nontank vessel in the 2006 Act. Section 608 of the 2006 Act clarified the tonnage applicability for NTVRP, setting the tonnage threshold as 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302 (international) or the regulatory measurement system of 46 U.S.C. 14502 (domestic) for vessels not measured under 46 U.S.C. 14302.

One commenter also stated that if the Coast Guard decides to base the NTVRP applicability on international tonnage thresholds, then existing vessels without international tonnage assignments should be allowed to use their regulatory tonnage to determine whether the regulations apply to the vessel.

As stated above, this option already exists in the regulatory text under § 155.5015(a)(4). To clarify, if your vessel is not currently measured under the convention measurement system (46 U.S.C. 14302) then the vessel tonnage measurement as taken under 46 U.S.C. 14502 would apply to determine if your vessel must prepare an NTVRP.

One commenter suggested the tonnage limit be raised to 1,600 gross tons.

The Coast Guard disagrees. The Coast Guard must work within the parameters set forth by the law, which sets the tonnage threshold as 400 gross tons or greater. The Coast Guard has no discretion in regards to this requirement as it is established in law at 33 U.S.C. 1321(a)(26).

Fuel Amount

The Coast Guard received five comments on fuel amount. Commenters stated the amount of fuel a vessel carries should be the limiting factor when defining the applicability for the NTVRP final rule.

The Coast Guard disagrees. The 2004 Act and 2006 Act mandate that NTVRPs be used for all nontank vessels except those specified in § 155.5015(d). The Acts provide no additional opportunity for exemption. The law does not afford the Coast Guard any discretion in determining the applicability of the NTVRP rules. However, the Coast Guard has taken steps to tier these NTVRPs based on the vessels' perceived risk. Table 155.5050(p) indicates how the Coast Guard tiers the required response resources to the total amount of a vessel's oil capacity.

Offshore Supply Vessels

The Coast Guard received one comment on offshore supply vessels. The commenter stated that the Coast Guard cannot require offshore supply vessels to comply with 33 CFR part 155, subpart J since they are specifically exempted under 33 CFR part 155, subpart D. The commenter stated that since this rulemaking deals exclusively with nontank vessels, vessels that are covered by the tank vessel section of 33 CFR part 155 are outside the scope of the current rulemaking.

The Coast Guard disagrees that offshore supply vessels, as defined in 46 U.S.C. 2101, are covered by 33 CFR part 155, subpart D. Offshore supply vessels are explicitly excluded, rather than exempted, from subpart D applicability by 33 CFR 155.1015(c). Subpart D was specifically drafted in this manner to comply with the Congressional mandate set forth in the Coast Guard Authorization Act of 1992 (Pub. L. 102–587), which provides that offshore supply vessels ''are deemed not to be a tank vessel for the purposes of any law.'' Now that the Coast Guard must promulgate VRP requirements for nontank vessels, offshore supply vessels that meet the definition of a ''nontank vessel'' in FWPCA (33 U.S.C. 1321) are included in the requirements of this final rule.

Exemptions

The Coast Guard received five comments on exemptions. Commenters suggested that the Coast Guard exempt the following nontank vessels: Those that operate in waters with OSRO coverage, are a small passenger vessel

that operates less than 20 miles from shore, carry #2 diesel, or are a vessel constructed with a double bottom.

The Coast Guard disagrees. The Coast Guard must work within the parameters set forth by the 2004 Act and the 2006 Act, which require that this final rule apply to certain nontank vessels 400 gross tons or greater. While we cannot exempt these vessels, we have lessened the regulatory burden for them, where possible. For example, vessels that carry non-persistent oils, such as #2 diesel, do not need to meet the requirements regarding dispersants. We make no allowance for type of hull construction. A spill of any size poses a threat to the environment, and planning to mitigate the effects of a spill is beneficial no matter the type, construction, size, or fuel type of a vessel.

Vessels Built Before 1982

The Coast Guard received two comments on vessels built before 1982. Commenters stated that vessels built before July 18, 1982, as stated under the historical notes of 46 U.S.C. 14301, engaging on foreign or domestic voyages, are not required to use convention measurement as the basis for application under this law. One commenter requested that the Coast Guard alter the definition of nontank vessel to include this applicability law.

The Coast Guard disagrees. The Coast Guard must work within the parameters set forth by the 2004 Act and the 2006 Act. In July 2006, Congress amended the definition of nontank vessel in the 2006 Act. Section 608 of the 2006 Act clarified the tonnage applicability of this statutory requirement and therefore, for this rule, set the tonnage threshold at 400 gross tons or greater, as measured under the convention measurement system in 46 U.S.C. 14302. In other words, if a nontank vessel has already been measured under 46 U.S.C. 14302, the Coast Guard must use this tonnage measurement for purposes of applying the VRP requirements, regardless of whether the vessel engages on domestic or foreign voyages or when the vessel's keel was laid. Only if a nontank vessel has not previously been measured under 46 U.S.C. 14302, and otherwise meets an exception under 46 U.S.C. 14301(b), may the Coast Guard consider the vessel's measurement under the regulatory measurement system of 46 U.S.C. 14502 for purposes of applying the VRP requirements. The historical notes to 46 U.S.C. 14301 are thus irrelevant in this context because the Coast Guard has received a specific, more recent legislative mandate on how nontank vessel tonnage should be measured for purposes of section 311 of the FWPCA (33 U.S.C. 1321).

Blue Water/Brown Water Vessels

The Coast Guard received three comments on blue water (ocean going) and brown water (inland) vessels. Commenters stated that these regulations should not apply to vessels that operate on rivers, such as river towboats and passenger vessels.

The Coast Guard disagrees. The law requires all vessels, 400 gross tons or greater, to have NTVRPs regardless of the operating environment in the navigable waters of the United States. Risk of damages from an oil spill exist no matter where the operating environment.

2. Shipboard Oil Pollution Emergency Plan (SOPEP)—§§ 151.09, 155.5030(h)

The Coast Guard received one comment on §§ 151.09 and 155.5030(h), regarding SOPEP. The commenter stated that the Coast Guard should either exempt vessels on international voyages required to have a SOPEP plan from the NTVRP requirement or bring the SOPEP requirements into alignment.

The Coast Guard agrees in part. The Coast Guard included a ''combined plan'' provision in the proposed rule, in the applicability section of our SOPEP regulations located in 33 CFR 151.09(d)(2). The amended applicability states that if a U.S.-flag nontank vessel holds a Coast Guard-approved NTVRP and provides evidence of compliance with new 33 CFR part 155, subpart J, then the Coast Guard considers the SOPEP regulations met, as listed in 33 CFR 151.26 through 151.28. Amending our SOPEP regulations to reflect changes to the international standard negates the need for more than one oil spill response plan to be kept onboard a vessel.

3. Annual Review—§§ 151.28, 155.1070

The Coast Guard received one comment on §§ 151.28 and 155.1070, regarding annual reviews. The commenter suggested the Coast Guard remove the requirement that vessels send a letter to the Commandant saying that the annual review has taken place.

The Coast Guard agrees. The Coast Guard has removed the requirements in paragraphs 151.28(h) and 155.5070(a) to report annual reviews. This aligns those paragraphs with the requirements for tank vessel response plans in § 155.1070.

4. Incorporation by Reference—§ 155.140

The Coast Guard received one comment on § 155.140, Incorporation by reference. The commenter asked why the Coast Guard proposes to incorporate, by reference, the *Ship to Ship Transfer Guide (Petroleum), Fourth Edition, 2005 (STS Guide),* since the Coast Guard has already incorporated the second edition of the same publication by reference. The commenter also asked how the Coast Guard intends to impose the provisions in the *STS Guide,* since this publication only provides advice and guidance and does not contain mandatory language.

The Coast Guard incorporates the fourth edition of this reference because it is the most recent version of the *STS Guide.* Newer versions of documents incorporated by reference do not automatically update in the regulations when a new version is published. The Coast Guard offers this reference as a planning guideline to help the regulated entity comply with § 155.5035(c)(5)(i). The Coast Guard understands 33 CFR part 155, subpart D incorporates the second edition of the *STS Guide;* the Coast Guard will address that in a future rulemaking.

The regulatory text incorporating this reference suggests that this reference ''should'' be used to outline the format and content of procedures for ship-to-ship transfers of fuel in an emergency. While we recommend that the nontank owner or operator use this reference as a guide for ship-to-ship procedures in emergencies, this recommendation is optional to allow the nontank owner or operator flexibility.

5. Definitions—§§ 155.1020, 155.5020

The Coast Guard received 10 comments on definitions.

Cargo

The Coast Guard received one comment on the definition of ''cargo.'' The commenter requested the Coast Guard clarify the term cargo with regard to this rulemaking.

The Coast Guard has clarified the definition of cargo by aligning the definition in new 33 CFR 155.5020 more closely with the definition of cargo in 33 CFR part 155, subpart D.

The Coast Guard has revised the definition for ''worst case discharge'' (WCD) for 33 CFR part 155, subpart J. The Coast Guard determined that the requirements for nontank vessels carrying oil as secondary cargo should align as closely as possible with the requirements for vessels subject to subpart D. Subpart D vessels must plan for a discharge of a vessel's entire oil cargo, but do not currently plan for the additional discharge of the same vessel's entire fuel oil. This WCD definition revision ensures that a nontank vessel

carrying oil as cargo will likewise plan for the discharge of the vessel's entire oil cargo, unless that vessel carries more fuel oil than oil cargo. In the latter case, the owner or operator must instead plan for the discharge of a vessel's entire fuel oil, like other nontank vessels (which do not carry oil as cargo) under subpart J. The Coast Guard intends to revise the WCD definition to include both fuel oil and oil cargo for all vessels subject to subparts D and J in a future rulemaking project.

Contract or Other Approved Means

The Coast Guard received one comment on the definition of ''contract or other approved means.'' The commenter requested that the Coast Guard change the proposed definition of ''contract or other approved means'' to take into account the particular circumstances of domestic passenger vessels. The commenter stated the requirement to obtain written consent from the entity creates a potential administrative and financial burden on the small capacity vessel planner, who is otherwise entitled to the lesser response planning requirement.

The Coast Guard disagrees. Resource providers need to know if they are listed in a plan so that they can respond effectively. The planholder [1] needs to know if the required response equipment provider has the necessary resources for a response in a specific area of operation.

Inactive Vessel

The Coast Guard received one comment on the definition of ''inactive vessel.'' The commenter requested the final rule specifically consider dry bulk carriers an inactive vessel when they are temporarily out of service for winter lay-up or long term lay-up.

The Coast Guard disagrees. If a vessel maintains fuel onboard while in a laid-up status for a season, it does not meet the definition of an inactive vessel, which requires emptying of tanks of fuel, among other requirements. In addition, a laid-up vessel that retains fuel onboard still presents a risk to the environment. Therefore, the vessel must plan for response resources in the event of a spill, to mitigate environmental damage.

Inland Rivers

The Coast Guard received six comments on the term ''inland rivers.'' Commenters urged the Coast Guard to use the term ''rivers and canals'' as defined in the existing tank vessel response requirements in 33 CFR 155.1020, instead of the proposed term ''inland rivers,'' which is undefined.

The Coast Guard agrees that there is no definition for ''inland rivers.'' The Coast Guard has replaced each instance of the term ''inland rivers'' with the term ''inland area'' as that term is defined in, and aligned with, subpart D. ''Inland area'' includes rivers and canals as a subset.

Transfer

The Coast Guard received one comment on the definition of ''transfer.'' The commenter recommended the Coast Guard add a definition of transfer to only include transfers on and off the vessel.

The Coast Guard agrees with this comment. The Coast Guard has added the definition of transfer to the NTVRP final rule. The definition refers only to transfers that take place to and from vessels.

Worst Case Discharge

In response to a comment on the definition of ''cargo,'' as discussed above, the Coast Guard revised the definition of ''worst case discharge.'' For a more detailed discussion of this change, please see the ''cargo'' section above.

6. Qualified Individual (QI)—§§ 155.1035, 155.5035

The Coast Guard received six comments on qualified individual (QI). Commenters recommended revising § 155.5035(e)(2) to include naming the company that provides QI services, as well as identifying a QI and alternate.

The Coast Guard disagrees; 33 U.S.C. 1321(j)(5) has a statutory requirement for the QI and alternate QI. 33 U.S.C. 1321(j)(5)(D) states that a QI has ''full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment.'' The Coast Guard interprets QI to mean an individual, not a company, who has the appropriate training and knowledge to conduct such an act as described above.

One commenter requested the Coast Guard remove the requirement that the QI be shore-based from the definition of a QI. The commenter added that the proposed rule offers no justification as to why the QI be shore-based, particularly in the case of a domestic passenger vessel that consistently operates on a well-defined route in a specific geographic location.

The Coast Guard disagrees. The QI's functions should not be performed by the same person who is embarked on the very same vessel, especially when coordinating a response to a spill from a vessel. A shore-based QI will not be distracted by events on a vessel spilling oil. The Coast Guard requires an alternate QI in the event that the QI is unavailable. It is unreasonable to assume that any one person can be available 24 hours per day, 365 days a year.

One commenter asked the Coast Guard to clarify the role the QI assumes in a salvage situation. The commenter added that the QI will notify the salvor but does not engage the salvor, and that the salvage contract is between the owner or master and the salvor.

The Coast Guard clarifies the role of a QI during a salvage situation as follows. The Coast Guard expects the QI to activate response resources following notification of a spill or threat of a spill; when there is a salvage and marine firefighting situation, the Coast Guard expects the QI to notify the listed primary salvage and marine firefighting resource provider. No change to the regulatory text is necessary.

7. Insurance Provider—§§ 155.1035(e)(3), 155.5035(e)(3)

The Coast Guard received two comments on §§ 155.1035(e)(3) and 155.5035(e)(3), regarding insurance providers. Commenters requested that the Coast Guard revise 33 CFR 155.1035(e)(3) and 155.5035(e)(3) to ask for the identification of the vessel's insurance provider instead of ''insurance representatives.''

The Coast Guard agrees and has amended the requirement to state that the vessel may list an insurance provider as a contact under § 155.5035(e)(3). The Coast Guard also amended the same requirement in subpart D in § 155.1035(e)(3).

8. Local Agent—§§ 155.1035(e)(4), 155.5035(e)(4)

The Coast Guard received one comment on §§ 155.1035(e)(4) and 155.5035(e)(4), regarding local agents. The commenter requested that the Coast Guard revise 33 CFR 155.1035(e)(4) and 155.5035(e)(4) to allow vessels to identify the local agent prior to arrival in port and note the local agent in the Notice of Arrival (NOA).

The Coast Guard agrees and has amended the requirement to state if a 24-hour point of contact, i.e., local agent, is not named specifically in the VRP, then the vessel owner or operator

[1] ''Planholder'' is a term used by the maritime industry in common parlance to refer the vessel ''owner'' or ''operator'' (as defined in 33 CFR 155.1020) responsible for submitting and maintaining a Vessel Response Plan on file with the Coast Guard.

must name the 24-hour point of contact prior to the vessel's arrival in port. The Coast Guard also amended the same requirement in subpart D in § 155.1035(e)(4).

9. Deviation From Approved Plan—§ 155.5012

The Coast Guard received two comments on § 155.5012, deviation from an approved plan. Two commenters stated that deviation from an approved plan should be permitted at any time by any Coast Guard official. This would allow for a more expeditious or effective response result, regardless of whether there is a Federal On-Scene Coordinator (FOSC) present. One commenter stated that there may be some cases in which this deviation would improve the response results and those on-scene should have the flexibility to make such a deviation.

The Coast Guard disagrees. Section 1144 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324; 110 Stat. 3901), also known as the ''Chaffee Amendment,'' amended the FWPCA (33 U.S.C. 1251 through 1387) regarding the use of spill response plans by stating that the ''owner or operator may deviate from the applicable response plan if the President or the FOSC determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.'' The regulations at § 155.5012 follow the plain language of the statute, permitting the President or FOSC to make the decision to deviate from an approved plan.

10. Interim Authorization—§ 155.5023

The Coast Guard received four comments on interim authorization. Commenters stated that the Coast Guard should remove the 2-year limit for interim operating authorization.

The Coast Guard disagrees. This requirement remains consistent with the requirements in subpart D. The FWPCA (33 U.S.C. 1321(j)(5)(G)) mandates the 2-year limit.

11. One-Time Port Waivers—§ 155.5025

The Coast Guard received one comment on one-time port waivers. The commenter stated that the one-time port waiver process needs to be clearly defined for remote areas.

The Coast Guard agrees. We have revised 33 CFR 155.5025 to clearly state the requirements for one-time port waivers. In remote areas, the COTP will closely scrutinize one-time port waiver requests to ensure that the contracted response resources meet the requirements to the maximum extent practicable. Additional information on the response resources required for a particular vessel can be found in 33 CFR Part 155, Appendix B. As new response resources become available, COTPs have the authority to require those assets be incorporated into VRPs before granting one-time port waiver requests. The COTP can only authorize a one-time port waiver for a vessel owner's or operator's NTVRP for only one transit into that specific COTP zone, for the lifetime of the NTVRP. However, for vessels regularly transiting remote areas that lack resources, vessel owners or operators may submit a request for Alternative Planning Criteria approval under 33 CFR 155.5067.

12. Geographic Area—§ 155.5030

The Coast Guard received one comment on § 155.5030, regarding the geographic areas covered by the rulemaking. The commenter recommended that the Coast Guard treat the Great Lakes (Ninth Coast Guard District) as a single system/geographic area, with regard to the requirement for GSAs and for all other geographic specific requirements in the NPRM.

The Coast Guard agrees. The Ninth Coast Guard District is considering a consolidated Great Lakes Area Contingency Plan (ACP). This consolidated Great Lakes ACP may treat the Great Lakes as one geographical area, which should allow owners or operators to submit one GSA. No change to the regulatory text is necessary.

13. Electronic Copies—§§ 155.1030(i), 155.5030(g)

The Coast Guard received six comments on § 155.5030(g), electronic copies. Commenters recommended that the Coast Guard allow vessels to keep electronic copies of the NTVRP approval letter onboard, as opposed to a hard copy. One commenter also recommended deleting the terms ''original'' and ''notarized'' from § 155.5030(g)(1).

The Coast Guard agrees and has changed §§ 155.1030(i), 155.5030(g) 151.27, and 151.28 to allow for electronic copies onboard vessels. The Coast Guard has also removed the terms ''original'' and ''notarized'' from §§ 155.1030(i)(1), 155.1030(i)(2), and 155.5030(g)(1).

14. Portions of Plan Carried on Vessel—§§ 155.1030(i), 155.5030(g)(1)

The Coast Guard received two comments on § 155.5030(g)(1), the portions of an NTVRP that must be carried on a vessel. One commenter stated the Coast Guard should include a similar provision to the current provision in 33 CFR 155.1040(i) for tank vessels, which would include a larger fleet or umbrella plan. This would allow the vessel to only carry the information that the crew needs to initiate notifications and response.

The Coast Guard agrees. Vessels do not need to maintain the whole NTVRP onboard the vessel, whether the vessel is part of a fleet or not. The vessel need only carry those sections necessary to initiate notifications and crew response. The Coast Guard believes the sections needed for a response include general information and introduction, notification procedures, shipboard spill mitigation procedures, list of contacts, training procedures, exercise procedures, GSA, and vessel appendix. The Coast Guard has amended §§ 155.5030(g)(1) and 155.1030(i) to require vessels carry those sections deemed necessary to initiate notifications and crew response, listed in the previous sentence, onboard the vessel.

15. MARPOL VRP Requirements—§ 155.5030(h)

The Coast Guard received one comment on § 155.5030(h), International Convention for the Prevention of Pollution from Ships (MARPOL) response plan requirements. The commenter stated the Coast Guard should permit (but not mandate) the vessel owner to create one response plan, meeting the requirements of both MARPOL and the NTVRP requirements.

The Coast Guard agrees. The Coast Guard included this provision in the proposed rule in 33 CFR 155.5030(h). This paragraph states that SOPEP information may be combined with a Coast Guard NTVRP as long as the vessel meets the additional requirement listed in § 155.5035(k). We did not change this provision in the final rule.

16. Protection and Indemnity (P&I) Club—§ 155.5035

The Coast Guard received seven comments on § 155.5035, regarding Protection and Indemnity (P&I) clubs. Commenters stated the tank VRP regulations do not require including details of a P&I Club and local correspondent and therefore should not be included in the requirements for NTVRP.

The Coast Guard disagrees. The tank vessel regulations require the listing of applicable insurance representatives or surveyors for the vessels' area of operations in § 155.1035(e)(3). The P&I Club is the insurance provider most likely to cover liabilities arising from oil spills and so listing of the P&I Club and local correspondent contact details is

most valuable to the Coast Guard. The rule states the nontank vessel owner or operator should submit P&I Club information, as required by § 155.5035(b)(5)(i)(O), as applicable. In cases where a nontank vessel owner or operator does not have P&I Club coverage, the Coast Guard does not require the submission of the coverage information.

One commenter asked the Coast Guard to clarify whether membership in a P&I Club gives nontank vessel owners or operators the ability to list, in their NTVRPs, the response resource providers that are available through their P&I membership. The commenter stated that if it is not the Coast Guard's intent to allow listing the response resource providers available through their P&I membership, the Coast Guard should amend the rule to allow it. The same commenter also requested the Coast Guard clarify what further proof, if any, in the way of submitted paper work, the Coast Guard will require the nontank vessel to submit to confirm they have the required coverage via the P&I relationship to the National Response Corporation and/or Marine Spill Response Corporation response resources for their nationwide OSRO coverage.

The Coast Guard agrees in part. While the Coast Guard does not allow third-party contracts, such as through a P&I Club, with OSROs, the Coast Guard will accept contracts signed on behalf of a vessel owner or operator by an authorized agent or power of attorney. The contract must still be between the vessel owner or operator and the resource provider rather than with a third party. The Coast Guard requires that an NTVRP contain a list of resource providers available by contract or other approved means.

17. Shipboard Spill Mitigation Procedures—§ 155.5035(c)(1)

The Coast Guard received seven comments on § 155.5035(c)(1), shipboard spill mitigation procedures. Commenters requested that the Coast Guard remove the personnel protection issues, protective equipment, threats to health and safety, containment and other response techniques, and isolation procedures requirements listed under § 155.5035(c)(1)(v)–(ix). The commenters requested that the Coast Guard remove these requirements because they are not in NVIC 01–05 or tank VRP regulations.

The Coast Guard disagrees. We understand that the requirements listed in 33 CFR 155.5035(c)(1)(v)–(ix) are not in the tank regulations or NVIC 01–05. The International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) published Resolution MEPC.86(44) in 2000. Resolution MEPC.86(44) amended the Shipboard Oil Pollution Emergency Plan requirements reflected in Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL Annex I). Resolution MEPC.86(44) added criteria under the ''Mitigating Activities'' section. In order to align our domestic and current international requirements, the Coast Guard included those additional requirements and mirrored them in our domestic NTVRP requirements under § 155.5035(c)(1)(v)–(ix). U.S. vessels operating on international routes are required to comply with both international and U.S. requirements. Likewise, foreign vessels calling on U.S. ports are also following these international requirements. Adding them to the NTVRP requirements consolidates shipboard and shore based spill requirements in one location, better facilitating the response during an actual casualty and potentially making compliance easier. The Coast Guard agrees that the tank VRP regulations should be brought up-to-date with the amendments; the Coast Guard will address that in a future rulemaking.

18. International Ship Management (ISM) Checklist—§ 155.5035(c)(2)

The Coast Guard received 10 comments on § 155.5035(c)(2), the International Ship Management (ISM) checklist. The commenters recommended that the Coast Guard remove the requirements for planholders to create vessel-specific checklists produced under the ISM Code as listed under § 155.5035(c)(2). Commenters stated that this requirement goes beyond what the tank VRP regulations and NVIC 01–05 require. Commenters stated that the ISM Code does not apply to inland towing vessels and many coastal towing vessels, so they shouldn't have to create an ISM checklist. Commenters also stated the ISM Code doesn't apply to many offshore vessels and tugboats, so they shouldn't have to create an ISM checklist.

The Coast Guard agrees in part. As proposed in the NPRM, § 155.5035(c)(2) requires that the crew follow procedures to mitigate or prevent any discharge or substantial threat of a discharge. These procedures can reference specific vessel checklists required by the ISM Code or they can be in some other form that will ensure the crew considers all appropriate factors when addressing a specific casualty.

Additionally, 33 CFR 155.5035(c)(2) states ''or other means that will ensure consideration of all appropriate factors when addressing a specific casualty.'' In cases where the Coast Guard does not require vessels to comply with the ISM Code, they may use other means during the planning process to meet the requirements of this section. Although the tank VRP regulations do not require a checklist produced under the ISM Code, the Coast Guard aligned this regulation with Regulation 37 of MARPOL Annex I, which requires checklists or other means that will ensure the master considers all appropriate factors when addressing specific casualties. The Coast Guard agrees that the tank VRP regulations should be brought up-to-date with the amendments; the Coast Guard will address that in a future rulemaking.

19. Dispersants—§§ 155.5035(i), 155.5050

The Coast Guard received six comments on §§ 155.5035(i) and 155.5050, dispersants. Commenters stated that vessels using non-persistent oils for fuel, such as diesel, should be exempt from including dispersant resources in their plans.

The Coast Guard agrees and has already included that exemption in the proposed rulemaking. Currently the Coast Guard has no existing provision requiring nontank vessels carrying non-persistent or group I oil, such as gasoline, diesel, and jet fuel, to plan for or contract with dispersant resource providers. The dispersant section in § 155.5050(j) applies to only nontank vessels carrying groups II through IV petroleum oil.

One commenter recommended that the Coast Guard should modify the rule to allow the planholder to comply with aerial reconnaissance and dispersal requirements by sub-contract through OSROs and/or the spill management team (SMT) already identified in the VRP.

The Coast Guard agrees that the planholder will be able to use contracted OSRO/SMT as identified in the VRP. The Coast Guard will accept this as long as the vessel demonstrates sufficient proof of aerial tracking to the Commandant (CG–CVC). The Coast Guard proposed this provision in the NPRM and has not made any changes to the final rule.

Two commenters suggested the Coast Guard create a mechanism for providing updates via the **Federal Register** and/or through the Homeport Internet site for those new areas that are pre-authorized

for dispersant use. These commenters also suggested the Coast Guard establish a 12-month time period for affected industry members to amend their VRPs for vessels in these newly added areas.

The Coast Guard agrees, and in a previous rulemaking established a 24-month period for vessel owners and operators to update VRPs to include dispersant resource providers (74 FR 45004, 45009). The Coast Guard plans to publish any changes to preauthorization as a notice, when authorized, in the **Federal Register**. Furthermore, Homeport has a library of all ACPs, which contains areas preauthorized for dispersant use. The Coast Guard will note any updates to dispersant preauthorization in the ACP or regional contingency plan. The Homeport Web site is *http://homeport.uscg.mil/*. ACPs are maintained on the ''Safety and Security'' section of each COTP sub-site in Homeport. COTP sub-sites are found under the ''Port Directory'' tab.

One commenter stated that the proposed regulation did not consider the fact that dispersants presently stockpiled in the United States are not as effective on heavy or intermediate fuel oils as they are on crude oils.

The Coast Guard clarifies our consideration of a dispersant's effectiveness as follows. We would like to emphasize that these regulations only intend to make dispersant equipment available; the efficacy of dispersants currently stockpiled in the United States is beyond the scope of this rulemaking.

20. Contracts With Providers—§ 155.5050(d)

The Coast Guard received 10 comments on § 155.5050(d), regarding contracting with providers. Commenters recommended that the Coast Guard require direct contracts for average most probable discharge (AMPD) coverage between the vessel and the provider. As an alternative, commenters suggested the Coast Guard should require a mutual aid agreement between the transferring facility and nontank vessel.

The Coast Guard disagrees. The definition of AMPD, as taken from § 155.1020, refers to cargo oil transfer operations to or from vessels. Nontank vessels that only carry groups I through IV oil as fuel have to identify, but would not have to ensure the availability of AMPD resources by contract or other approved means. This is because the Coast Guard already requires the tank vessel or facility providing the bunker to the nontank vessel to plan for the AMPD resources covering the transfer. Listing of a marine transportation-related facility's or a bunker supplier's AMPD resources is unnecessary, as these AMPD resources are already required by either 33 CFR 154.545, 154.1045(c), or 155.1050(d)(2).

Commenters expressed concern over the requirement that certain categories of nontank vessels need not ensure access to response assets through contracts. Commenters stated this requirement would allow the VRP to merely identify response resources with written consent from the contractor and/or provider, or it might not even require written consent.

The Coast Guard understands the commenters' concern. Because the Coast Guard recognizes that not all nontank vessels are the same, we proposed and are now promulgating tiered response resource requirements based on fuel and cargo oil capacity as shown in new 33 CFR Table 155.5050(p). See additional discussion below in this section (i.e., section VI.A.20).

One commenter stated that the Coast Guard should require vessels carrying 250 barrels or more to have a contract for marine firefighting or salvage response resources.

The Coast Guard disagrees. 33 CFR 155.5050(p) requires nontank vessels with a fuel and cargo capacity less than 2,500 barrels to only identify and plan for response resources and that availability by contract is not required. While the Coast Guard does not require contracts for these vessels, we believe that requiring these vessels to plan for and comply with all of the other requirements of subpart I is sufficient. These requirements include identifying resource providers, who must be given a copy of the pre-fire plan required by 33 CFR 155.4035(b). The resource providers must agree that the plan is acceptable and agree to implement it to mitigate a potential or actual fire.

One commenter stated that the Coast Guard requirement of contracting with a resource provider will mean a cost associated with that contract coming from a business's bottom line.

The Coast Guard agrees in part. We recognize that the development of an NTVRP will not occur without cost. However, that cost is dependent on many factors, including the type of vessel, area of operation, and amount of oil capacity. The Regulatory Assessment provides a breakdown of our estimate for plan development cost. A copy of the Regulatory Assessment is available in the docket where indicated under **ADDRESSES**.

21. Response Times—§ 155.5050(g)

The Coast Guard received one comment on § 155.5050(g), regarding response times. The commenter stated the 24-hour response time requirement is unrealistic for areas a great distance from shore and in many remote areas of the country.

The Coast Guard agrees. In cases where the national planning criteria are not appropriate for the vessel in the areas that the owner or operator intends to operate, the owner or operator may request alternative planning criteria in accordance with new 33 CFR 155.5067.

22. Salvage and Marine Firefighting Resources—§ 155.5050(i)

The Coast Guard received 13 comments on § 155.5050(i), regarding salvage and marine firefighting. Commenters stated that NTVRP requirements for foam and water are unwarranted; the Coast Guard should not require nontank vessels and offshore vessels to meet the same requirements as tank vessels.

The Coast Guard disagrees. The tank vessel rules determine the required quantity of foam based on a calculation that considers the overall deck area of the ship, which assumes that the area of fire involvement is limited. The nontank vessel regulations use the same criteria for calculating the amount of foam, with the principal hazard expected to be fuel leaking from a tank in the machinery space. The requirements for foam and water should be an appropriate rate, as stated in § 155.4030(g). If the specified rate is not suitable, then nontank owners or operators may use an appropriate rate and adequate source of foam, as stated in § 155.4030(g).

Commenters stated that salvage and marine firefighting resources have little effect if the vessel operates many miles offshore. The commenters stated that neither firefighting nor salvage within the 24-hour response time would be very effective.

The Coast Guard disagrees. The salvage and marine firefighting timeframes apply only to defined operating environments as stated in 33 CFR 155.4040. Commenters referred to a response to a worst case release in the ''Open Ocean'' operating environment in 33 CFR 155.1020. None of the timeframes listed in Table 155.4030(b) apply to this operating area. An owner or operator must still contract for salvage and marine firefighting services, provide a description of how they intend to respond, and provide an estimated response time when required, according to 33 CFR 155.4030(b). In cases where the national planning criteria are inappropriate to the vessel for the areas in which it intends to operate, the owner or operator may submit an alternative planning criteria in accordance with 33 CFR 155.5067 to the Coast Guard for approval.

One commenter stated that the Coast Guard cannot expect salvage equipment to arrive on scene within 24 hours; it will take days for the equipment to arrive.

The Coast Guard intends to rely on the vessel owners or operators to prudently identify contractor resources to meet their needs. This rule intends to increase resource providers' capabilities to the level necessary to handle emergency incidents prior to deterioration into WCD scenarios. The rule will also increase the response capabilities necessary to keep port and waterways open in a WCD scenario, which might include a national security incident. The temporary waiver provision allows for a 1-year suspension of on-site salvage and firefighting assessment services, 2 years for hull and bottom survey services, 3 years for salvage stabilization services, 4 years for fire suppression services, and 5 years for specialized salvage operations services as outlined in 33 CFR 155.4030(b) and 155.4055(g). After temporary waivers expire, the Coast Guard will not authorize vessels to trade in U.S. waters without meeting the requirements of this rule. The rule does not contain a provision for consideration of additional waivers, although vessels can propose alternative planning criteria measures in accordance with 33 CFR 155.5067.

One commenter suggested that the Coast Guard form an ad-hoc advisory committee with members from the Coast Guard and industry in order to develop a salvage and marine firefighting standard for nontank vessels.

The Coast Guard agrees and disagrees. The Coast Guard believes the current salvage and marine firefighting regulations provide a sufficient level of response capability for nontank vessels. However, the Coast Guard is open to the idea of discussing revisions to the current salvage and marine firefighting regulations. In addition, the Coast Guard has a variety of advisory committees and quality partnerships with different segments of the maritime industry that regularly provide input on marine safety regulations, including VRPs.

One commenter stated that VRPs will only have one salvor, and will therefore require immediate activation of the salvor. The commenter believes this will lead to only one solution and there will not be any competition to come up with other solutions.

The Coast Guard disagrees. VRPs may list more than one salvor. A VRP GSA must list primary resource providers who are responsible for all, or a subset of, the services that are listed in Table 155.4030(b). VRPs may list additional resource providers for each service, but VRPs must indicate the primary resource provider for the COTP zone. The VRP establishes response times for those operating areas identified in Table 155.4030(b). For areas outside of the operating areas identified in Table 155.4030(b), but within U.S. waters, vessel owners or operators must still contract for salvage and marine firefighting services, provide a description of how they intend to respond, and provide an estimated response time when these services are required (33 CFR 155.4040(d)(6)). 33 CFR 155.5012 describes the means to respond using alternate strategies based on FOSC approval of a salvage plan that the attending salvage master develops, which may provide for a more expeditious or effective response.

One commenter suggested adjusting the definition of emergency towing to address the reality of towing resources and brown water (inland) versus blue water (ocean going) vessels. The commenter also suggested the Coast Guard remove the requirement for named vessels of specified capability, since the capability mandated does not exist in each inland COTP zone and certainly not on a named (dedicated) basis.

The Coast Guard disagrees. The Coast Guard recognizes that inland barges operate in a different environment than offshore vessels; however a VRP must still identify effective emergency towing vessels. Inland operators may comply by contracting emergency towing vessels according to the established requirements or submit alternative planning criteria for approval in accordance with 33 CFR 155.5067.

The Coast Guard revised the following sections to clarify salvage and marine firefighting applicability for nontank vessels as discussed above: §§ 155.4010, 155.4015, 155.4020, 155.4025, 155.4030, 155.4035, and 155.4052.

23. Training and Exercises—§§ 155.5055, 155.5060

The Coast Guard received five comments on §§ 155.5055 and 155.5060, training and exercises. One commenter stated that it is unreasonable and unnecessary to expect a vessel operator to participate in unannounced exercises for each COTP zone. The commenter adds that the Coast Guard should have operators, within a geographic region, specifically the Great Lakes, participate in one exercise annually. Commenters recommended the Coast Guard reduce NTVRP training, exercises, and drills. One commenter stated the regulations should specifically state that vessel owners can develop and administer training appropriate to the vessel and area of operation by using an alternate approved plan. The commenter also stated that the Coast Guard should require the vessels owner exercise the entire spill response plan every 3 years, while allowing vessel owners to exercise different elements of the spill response plan at different times.

The Coast Guard agrees and in the final rule offers a voluntary option for vessels with an oil capacity of less than 250 barrels under 33 CFR 155.5061. As this is a new program, the Coast Guard established the 250 barrels participation limit to provide flexibility to those nontank vessels that present the lowest level of oil spill risk (i.e., oil capacity) of the 3 oil capacity levels in the NTVRP regulations. The 250 barrels limit is a common threshold used in existing Coast Guard regulations on oil transfer requirements (33 CFR Part 155 Subpart C). This option allows those vessels to submit an Alternative Training and Exercise Program to the Coast Guard. This Alternative Training and Exercise Program is a third-party or industry organization-developed standard that the Commandant (CG–CVC) has determined provides an equivalent level of training and exercise preparedness to that established by subpart J.

24. Alternative Planning Criteria—§ 155.5067

The Coast Guard received 12 comments on § 155.5067, regarding alternative planning criteria. Commenters stated that requiring vessels to submit alternative planning criteria 45 days in advance is neither commercially viable nor reasonable.

The Coast Guard disagrees. For a nontank vessel in the spot market, the Coast Guard recommends the vessel obtain advanced approvals from COTP zones where the vessel has the potential to transit or operate. If the vessel finds itself in a situation where advanced approval has not been obtained, then it should request a one-time waiver from the COTP. In all other cases, the Coast Guard expects alternative planning criteria submissions to be submitted within the time frame listed in this final rule, which was changed to 90 days, aligning it with the timeframe provided in subpart D. The Coast Guard is developing national policy guidance to assist vessel owners or operators in the development and subsequent approval of alternative planning criteria. This new policy will facilitate quick approval of alternative planning criteria requests.

Commenters suggested that the Coast Guard should allow vessels to submit alternative planning criteria directly to the Commandant (CG–CVC), versus the local COTP. Commenters stated that an

association or consortium, on behalf of a class of vessels that share common operating characteristics, would accomplish this.

The Coast Guard disagrees. The local COTP, in close coordination with the local area committee, can best determine whether the response resources in their zone meet the national planning criteria.

One commenter stated that, due to MARPOL and the proposed NTRVP's diverse requirements, the Coast Guard should not require the combination of both plans as prescribed in § 155.5067. The commenter also stated that jurisdictions, where the additional U.S. requirements are not applicable, will also require the plan.

The Coast Guard believes the commenter mistakes the purpose of 33 CFR 155.5067. The vessel owner or operator submits alternative planning criteria as a request to the Coast Guard when they believe the national planning criteria are not appropriate to their vessel for the area where it intends to operate.

One commenter suggested that the Coast Guard amend the rule to require sectors in remote areas to establish minimally acceptable resource requirements, based on actual resident capability. The commenter added that the Coast Guard should not require a vessel owner or operator to obtain local OSRO coverage for transiting offshore (up to 200 nm) when OSROs have no capability to respond nearshore or offshore.

The Coast Guard disagrees. The Coast Guard intends the purpose of alternative planning criteria to gradually build-up response capability in remote areas. We encourage Area Committees, established under the National Contingency Plan (NCP) (40 CFR part 300), to address this issue and facilitate solutions to include recommending acceptable alternative planning criteria for NTVRP approval and building up required response resources in applicable areas.

One commenter stated that the Coast Guard should consider making the alternative planning criteria framework an interim approach to be replaced by a more permanent set of requirements at some future date. The commenter stated that Area Committees cannot build response resources. The commenter believes Area Committees should not provide the response resources and preparedness for regulated entities or make decisions granting relief to regulated entities.

The Coast Guard agrees that the Area Committees cannot build response resources for vessels. However, Area Committees should have a thorough list of available resources within their Area of Responsibility. This list of resources should address remote areas where alternative planning criteria is necessary. The Coast Guard is currently developing a national Area Committee standard that each COTP zone can use to develop local resource lists. This national planning standard will be used by the COTP to address resource gaps until private industry response resources are sufficiently built up in remote areas to meet the planning standard described in 33 CFR part 155.

One commenter stated that this rule will result in a large increase in areas requiring waivers/alternate planning. The commenter also stated that the towing resources do not and will not exist in all sectors and the same will likely hold true for firefighting capability in many low volume ports.

The Coast Guard agrees in part. While the current state of resources in remote areas may not meet the criteria required by the Coast Guard's regulations, and waivers and alternative planning criteria will be used to ensure compliance requirements, the Coast Guard believes that over time the resources will build up to a point where waiver and alternative planning criteria will not be needed.

25. Notice of Arrival (NOA) Requirement—§ 160.206

The Coast Guard received one comment on § 160.206, regarding NOA requirements. The commenter stated that the Coast Guard shouldn't require owners or operators to submit their VRP control number as part of the NOA information because the Coast Guard is the issuing authority for the VRP control numbers.

The Coast Guard disagrees. Some vessels are associated with more than one VRP. For purposes of protecting navigation and the marine environment, the Coast Guard proposed this VRP-related addition to NOA reporting requirements under authority of section 4 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223. The Coast Guard will use this additional information to better determine which VRP the reporting vessel is operating under and if the vessel has an approved VRP GSA for the COTP zone in which the vessel intends to call.

*B. General Comments*

The Coast Guard received comments on the NPRM not related to a specific regulatory text citation. Below we discuss the comments and our responses.

1. Alternative Approach

The Coast Guard received four comments on alternative approaches. Commenters suggested the Coast Guard incorporate an alternative program approach consistent with the intent of the regulations, but tailored to the specific risk factors and operational profiles of a particular class of vessels. The commenters noted the Coast Guard has a program similar to this for the Alternative Security Program concept in 33 CFR 101.120(b).

The Coast Guard agrees in part. First, the Coast Guard has tailored the required response resources to risk (i.e., oil capacity) as seen in new 33 CFR Table 155.5050(p). Second, the Coast Guard has taken measures to incorporate an Alternative Training and Exercise Program into the final rule under § 155.5061 for vessels carrying less than 250 barrels of oil. Owners or operators may use the Alternative Training and Exercise Program for a particular class of vessels operating in similar operating environments.

2. Cost

The Coast Guard received one comment on cost. The commenter stated that while the costs would be shared among more vessels, the cost to the industry may well be larger than the cost for providing spill response equipment to tank vessels. The commenter added there will be a large investment in vessels, equipment, and crew for the OSRO, and the costs will be passed along to the vessel operator.

The Coast Guard disagrees; the Coast Guard does not believe nontank owners or operators will need to invest in OSRO vessels, equipment, and crew. Since the implementation of the tank VRP regulations in 1993, OSRO infrastructure, including vessels and equipment, has been in place in the continental United States for oil spill response coverage up to a WCD scenario. Nontank vessel owners or operators can contract with these OSROs or resource providers.

3. Direct Contracts

The Coast Guard received four comments on direct contracts. The commenter stated that requiring a direct contract (in lieu of a third-party option) will reduce preparedness, eliminate competition, and may reduce salvage effectiveness.

The Coast Guard disagrees. The Coast Guard requires a direct contractual relationship between the vessel owner or operator and the OSRO to ensure that specific resources are available to respond to any potential incidents.

While the Coast Guard does not allow third-party contracts, such as through a P&I Club, with OSROs or salvage providers, the Coast Guard will accept contracts signed on behalf of a vessel owner or operator by an authorized agent or power of attorney. The contract must still be between the vessel owner or operator and the resource provider rather than with a third party so that authority to authorize execution of the response plan is clear in the case of an incident. This is in accordance with 33 U.S.C. 1321(j)(5)(D)(iii), which states that a response plan shall ''identify, and ensure by contract or other means'' the availability of personnel and equipment to respond to a WCD and to mitigate or prevent a substantial threat of such a discharge.

4. Equipment

The Coast Guard received two comments on equipment. One commenter stated it would be more realistic to define response times based on the distance to the nearest commercial port, since many remote areas do not have the response equipment readily available.

The Coast Guard agrees that in some remote areas of the country, meeting national planning criteria is not possible. Because of this, 33 CFR 155.5067 allows vessels to submit alternative planning criteria for those areas where the national planning criteria cannot be met.

One commenter states that the response times listed in NVIC 01–05 are unrealistic. The commenter stated the 1 hour response time for oil containment boom and having oil recovery devices available within 2 hours of any location where oil transfers take place would be impossible to meet. The commenter added that the vessels will not be able to maintain that amount of equipment onboard due to lack of available space.

The Coast Guard agrees. The final rule, like the NPRM, does not have the same requirements as NVIC 01–05 for this reason. Equipment identified to respond to a WCD should be capable of arriving on scene within the timeframes identified in Table 155.5050(g). The specific quantity of boom required for collection and containment will depend on the specific recovery equipment strategies employed.

5. Fuel Type

The Coast Guard received one comment on fuel type. The commenter expressed concern that the proposed rule does not adequately address the substantial variation in fuel oils typically carried onboard nontank vessels. The commenter noted the fuels vary in terms of their physical and chemical properties. The commenter also noted that current U.S. response infrastructure and technologies may not be appropriate for viscous fuel oils.

The Coast Guard disagrees. We believe that our proposed rule, like the current tank regulations in 33 CFR part 155 subpart D, adequately reflect the intent of the FWPCA. The FWPCA requires that vessels submit VRPs for responding, to the maximum extent practicable, to a WCD, and to a substantial threat of such a discharge of oil or hazardous substance. The Coast Guard understands that there are different physical and chemical properties associated with the oils carried onboard regulated vessels. But since this final rule remains relatively consistent with the tank VRP regulations, the Coast Guard has written the regulations so that all oil and oil residue spills will be responded to as the FWPCA intended.

6. International Issues

The Coast Guard received four comments on international issues. The commenters urged the Coast Guard to work with Transport Canada to coordinate contingency plan requirements for vessels transiting through transboundary areas.

The Coast Guard agrees. The Coast Guard already works with Transport Canada under the Canada-United States Joint Marine Pollution Contingency Plan. The Joint Contingency Plan provides a coordinated system for planning, preparedness, and responding to harmful substance incidents in the contiguous waters of Canada and the United States.

One commenter recommended the Coast Guard explicitly clarify the boundaries of the United States and Russia for the purposes of requiring VRPs for the Bering Strait.

The Coast Guard clarifies the applicability of VRP requirements in relation to the boundaries of the United States and Russia as follows. If a vessel is destined to or from a U.S. port or place, the Coast Guard will require it to submit a VRP for the port or place in which they are entering and include a GSA for all of the COTP zones that it transits through; if a vessel is not bound to or from a U.S. port or place, and it passes through the Bering Strait or any other international strait, the Coast Guard does not require that the vessel submit a VRP.

One commenter urged the Coast Guard to consult with the State of Alaska on the matter of nontank vessel compliance in the Bering Strait before finalizing the rule.

The Coast Guard gave Alaska, along with any other state, the opportunity to comment on this NPRM during the comment period. The Coast Guard will continue to consult with stakeholders among the states and other groups once the rule is implemented to ensure that the rule's provisions are well understood and operating as effectively as possible to prepare for, prevent and mitigate the effects of oil spills from nontank vessels.

7. NVIC

The Coast Guard received seven comments on NVIC 01–05. Commenters asked the Coast Guard to maintain consistency between the requirements of the NVIC and rule. Commenters requested that the Coast Guard not include requirements that exceed requirements for tank vessels.

The Coast Guard agrees in part. The NVIC provided interim guidance for nontank vessel owners or operators for preparing and submitting NTVRPs to respond to a discharge or threat of discharge of oil. The Coast Guard published the NVIC to assist nontank vessel owners with compliance with a Congressional statutory mandate under the FWPCA, as amended by OPA 90.

The NVIC and the NTVRP rule closely mirror the current tank vessel regulations. There is very little difference between the NVIC and the nontank final rule. However, the NVIC had provisions which the final rule improved after public notice and comment. For example, we added one-time waivers and 5-year approvals for approved NTVRPs. Also, NVIC 01–05 specifically warned in the ''Disclaimer'' section on p. 5, ''A response plan that complies with this guidance may ultimately not comply with the regulations, once issued. In which case, the plan may require revision by the vessel owner or operator to comply with the regulations.'' The Coast Guard agrees that the tank vessel regulations need to align with the updated SOPEP regulations and NTVRP regulations; the Coast Guard will address that in a future rulemaking.

8. Port or Place of the United States

The Coast Guard received two comments on the term port or place of the United States. Commenters requested the Coast Guard clarify the term in consideration of the provisions of 43 U.S.C. 1333, with regard to this rulemaking.

The Coast Guard clarifies the term in the following discussion. Port or place of the United States is a general term to describe any location subject to the jurisdiction of the United States. The

actual jurisdiction for the United States is different for each statute because each statute separately establishes jurisdiction. The term ''port or place of the United States'' in this regulation is intended as a clarifying description that modifies the preceding clause relating to innocent passage and transit passage. This particular term must be read in conjunction with the rest of the applicability requirements, particularly the requirement that the nontank vessel operate upon the navigable waters of the United States as defined in 46 U.S.C. 2101(17a) and 33 CFR 2.36(b)(1). Thus, for example, a nontank vessel that did not operate on the navigable waters of the United States could operate upon the outer continental shelf (OCS) of the United States or within the EEZ and not require a NTVRP. On the other hand, a nontank vessel that operated upon U.S. navigable waters en route a destination on the OCS outside U.S. navigable waters would be required to hold a NTVRP.

9. Risk Analysis

The Coast Guard received 20 comments on risk analysis. Commenters stated the regulatory analysis did not support the regulation that the Coast Guard created, including covering those vessels carrying lesser quantities of oil than tank vessels.

The Coast Guard disagrees. While the 2004 Act and 2006 Act mandate that certain owners and operators prepare and submit NTVRPs, the Coast Guard has taken steps to tier the NTVRP requirements based on a vessel's perceived risk. Table 155.5050(p) indicates how the Coast Guard tiers the required response resources to the total amount of a vessel's oil capacity.

Additionally, after further review of associated guidance and regulations, the Coast Guard has reduced the burden of compliance with the training and exercise requirements for certain nontank vessels. The Coast Guard has incorporated an Alternative Training and Exercise Program into the final rule under § 155.5061 for vessels carrying less than 250 barrels of oil. This Alternative Training and Exercise Program can be a third-party or industry organization developed standard that the Commandant (CG–CVC) has determined to provide an equivalent level of training and exercise preparedness to that in 33 CFR 155.5055(a) and 155.5060(a). Based on this new option, we believe some small entities will realize a reduced economic burden as a result of this section because they would have the flexibility to tailor their training and exercise program to meet this new requirement, based on Commandant approval, without having to perform the same level of training and exercises as owners and operators of larger nontank vessels.

Commenters stated the design, operational characteristics, and casualty history of towing vessels strongly suggest that towing vessels 400 gross tons or greater do not pose a significant risk of the kind of catastrophic spill that led to the imposition of this statutory mandate.

The Coast Guard disagrees and believes that the potential risk of towing vessels spilling oil into the environment exists. The 2004 Act and the 2006 Act specifically require nontank vessels 400 gross tons or greater to have a VRP. The rule intends to improve our nation's response planning and preparedness posture. While towing vessels will generally spill less fuel oil than a large nontank ship, the potential to disrupt maritime commerce and normal operations in the affected port and waterway is just as great. Therefore, all nontank vessels 400 gross tons or greater are required to prepare an NTVRP.

One commenter stated the Coast Guard should consider areas of operation, including those 100 miles offshore, along with the amount and type of fuels carried, in weighing the risk posed by a potential discharge of oil. The commenter stated that if a vessel operating 100 miles offshore discharged oil, the oil would likely evaporate before it reached territorial waters.

The Coast Guard agrees that a vessel operating 100 miles offshore poses less of an environmental risk to territorial waters than that same vessel operating closer to shore. However, the vessel still could spill oil while transiting to and from an offshore location. Therefore, offshore vessels 400 gross tons or greater operating on the navigable waters of the United States are required to prepare an NTVRP.

One commenter stated that the Coast Guard should tailor the final rule to the risk posed by the different vessel types.

The Coast Guard agrees in part. While the 2004 Act, as modified by the 2006 Act, requires all nontank vessels 400 gross tons or greater regardless of their type to have a VRP, we proposed in the NPRM, and maintain in this final rule, that the level of response planning and preparedness be tailored to the level of oil spill risk. To account for the variation in risk, we did not tailor the final rule by vessel type, but rather by oil capacity. Table 155.5050(p) summarizes this tiered approach to required response resources by grouping requirements into three segments, for nontank vessels with an oil capacity of—

- 2,500 barrels or greater;
- Less than 2,500 barrels, but greater than or equal to 250 barrels; and
- Less than 250 barrels.

Any spill has the potential to disrupt maritime commerce and damage the environment, thus, the requirement to prepare a VRP is important for all types of covered nontank vessels. But as Table 155.5050(p) summarizes, we have tailored the level of response planning and preparedness to the level of oil spill risk, considering that the law requires planning for a ''worst case discharge'' and the amount of a WCD would be considerably less for vessels carrying smaller amounts of oil.

10. Small Business

The Coast Guard received two comments on small businesses. Commenters stated that the rulemaking was not scaled properly for small business.

The Coast Guard disagrees. First, the Coast Guard proposed and is now promulgating requirements for response resources that are tailored to risk (i.e., oil capacity) as seen in Table 155.5050(p). Second, the Coast Guard has incorporated an Alternative Training and Exercise Program into the final rule under § 155.5061 for vessels carrying less than 250 barrels of oil. This Alternative Training and Exercise Program can be a third-party or industry organization developed standard that the Commandant (CG–CVC) has determined to provide an equivalent level of training and exercise preparedness to that in 33 CFR 155.5055(a) and 155.5060(a). With this new option, we believe some small entities will realize a reduced economic burden as a result of this section because they would have the flexibility to tailor their training and exercise program to meet this new requirement, based on Commandant approval, without having to perform the same level of training and exercises as owners and operators of larger nontank vessels.

11. State Plans

The Coast Guard received one comment on State plans. The commenter suggested that the Coast Guard should allow vessels that operate in waters with state requirements for spill response plans (e.g. Alaska and the west coast) to operate under their respective State plans, rather than both Federal and State plans.

Executive Order 13132, Federalism, sets forth specific requirements that the Federal government must follow as it develops and carries out policy actions

that affect State and local governments. In the 2004 Act and the 2006 Act, Congress delegated the responsibility to the Coast Guard to ensure all applicable vessels prepare and submit plans for responding to a discharge of oil from their vessels. We drafted the proposed rule to ensure that, to the extent practicable, it is consistent with any applicable State-mandated response plans in effect on August 9, 2004. To that end, we conducted a search of State laws addressing NTVRPs and concluded that we will not preempt any State law when this rule is final. The vessel owner or operator may comply with both State law and Federal law on this topic so long as, among other things, the vessel owner or operator has a direct contractual relationship with the oil spill removal organization. States that may have interest in this rulemaking had an opportunity to comment upon potential federalism issues.

Further discussion and information on this topic can be found in the Regulatory Analyses at section VIII.E., *Federalism.*

12. Tier 1 Response Resources

The Coast Guard received four comments on Tier 1 response resources. Commenters stated nontank vessels must share the investment in Tier 2 and Tier 3 capability, rather than just planning for Tier 1 response resources.

The Coast Guard determined that the vast majority of nontank vessels do not carry fuel oil in such large volumes to require them to have Tier 2 or 3 response resources available by contract or other approved means. However, when the Coast Guard considered the volumes of cargo oil carried in Very Large Crude Carriers or Ultra Large Crude Carriers, we realized the need for Tier 2 or 3 response resources for VRPs. The response to significant fuel oil spills from nontank vessels, such as the M/V COSCO BUSAN, indicates that response resources' availability is not an issue. OSROs responding to these spills have been able to successfully cascade in the needed response resources to contain and mitigate the impact of smaller spills. When the availability of response resources is limited or in question, vessels should employ the provisions of Coast Guard NVIC 07–01 to ensure a successful spill cleanup while maintaining adequate coverage for a region at the same time.

13. Additional Changes

The Coast Guard has made additional changes to the regulatory text, see V. Summary of Changes from the NPRM in this preamble for a discussion of these changes.

*C. Miscellaneous Comments*

The Coast Guard received nine miscellaneous comments. One commenter recommended the Coast Guard extend the presented proposal to include a requirement for a computerized calculation service, offering stability and strength calculations based on a refined, vessel-specific data model. The commenter also added that OPA 90 (Pub. L. 101–380; 104 Stat. 484) and MARPOL regulations require this service for tank vessels in U.S. waters as well as worldwide for nontank vessels.

The Coast Guard agrees. Nontank vessel owners or operators must plan for and identify salvage response resources, including the assessment of structural stability required by 33 CFR 155.4030(b). This requires the use of a salvage software program to assess the vessel's stability and structural integrity.

One commenter suggested 33 CFR part 155, subpart J become a stand-alone guide because subpart J often refers to 33 CFR part 155, subpart D.

The Coast Guard disagrees. The Coast Guard believes that interlinking subpart J with subpart D maximizes consistency. The regulations are easily accessible, since they are all contained under 33 CFR part 155. In addition, they are available in a searchable format at *http://www.gpoaccess.gov/cfr/index.html.*

One commenter expressed concern that the Coast Guard's VRP review and approval process for both tank VRPs and NTVRPs does not allow for public review and comment. The commenter recommended that the Coast Guard provide an opportunity for public review and comment on all VRPs, approved contractors, and information on the completion of drills and exercises required by the regulations.

The Coast Guard disagrees. The opportunity for public comment on the items listed above fall outside the scope of this rulemaking. OPA 90 requires the Coast Guard to review and approve VRPs. Due to the extensive regulatory requirements, the need to facilitate maritime commerce combined with the large volume of VRP submissions, an opportunity for public review and comment is not appropriate. The public can learn about response planning efforts and response resources in each COTP zone, through involvement with the local area committee.

One commenter requested the Coast Guard clarify how to select out domestic passenger vessels in the Coast Guard's VRP online database.

On September 30, 2010, the Coast Guard launched a new, online VRP database called VRP Express (*http://homeport.uscg.mil/vrpexpress*). This new web-based tool allows users to upload their VRP information electronically. This database also features a search function by vessel, so users may look up specific VRP information. This database is also capable of conducting advanced searches through expanded criteria.

To determine the number of authorized U.S. flagged passenger vessels, the user should first, select ''VRP Express'' in the ''Data Type'' and then select ''authorized'' in the ''Vessel Status''. Selecting the ''Advanced Search'' listed on the main page will expand search options. Next, in the Advanced Search, under ''Carrier Type,'' select ''a vessel type that matches your criteria.'' Finally, under ''Vessel Flag'' select ''United States'' and select ''Search''. Users will need to do the above process for each of the vessel carrier types they wish to query in the database.

Three commenters asked the Coast Guard to review comments that were previously submitted to a docket concerning the NVIC.

The Coast Guard has included those comments and responded to them in this Discussion of Comments and Changes section.

One commenter stated that a salvor is not an OSRO, i.e., clean-up contractor, and that referring to a salvor as such is confusing and misleading to industry.

The Coast Guard could not find where the proposed regulation refers to a salvor as an OSRO. Therefore, we are unable to respond to this comment.

*D. Beyond Scope*

One commenter suggested the Coast Guard reassess the licensing restriction. The commenter stated operators have been told they could not use international gross tonnage for operator license upgrades but rather domestic gross tonnage.

The Coast Guard found this comment to be beyond the scope of the proposed rulemaking.

## VII. Incorporation by Reference

The Director of the Federal Register has approved the material in § 155.5035 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in § 155.140.

## VIII. Regulatory Analyses

This NTVRP final rule implements a statutory mandate from the 2004 Act as amended by the 2006 Act. These statutes expanded response plan requirements from only tank vessels, for

which regulations were initially issued in 1993, to also apply to nontank vessels. This expansion recognizes the significant increase in the quantity of petroleum and petroleum products carried as bunker for fuel and the potentially catastrophic consequences should a mishap result in tank breach. In fact, a significant number of today's large nontank vessels carry more oil as fuel than many of the tank vessels did as cargo when the original tank vessel response plan requirements were promulgated. These statutorily-mandated requirements fill this regulatory gap and enhance the national oil response infrastructure.

When fully implemented, the NTVRP final rule will serve as a useful tool for national preparedness. While the Coast Guard and the entire marine industry have worked successfully to reduce the risk of oil spills, marine casualties, accidental or not, will always be possible. Furthermore, spill volumes could be potentially catastrophic, as was seen in the case of the M/V SELENDANG AYU. In 2004, M/V SELENDANG AYU spilled about 336,000 gallons of its fuel when it ran aground off the coast of the environmentally sensitive Alaskan Aleutian islands. Similarly, in 1999 the M/V NEW CARISSA spilled about 70,000 gallons of fuel oil during a grounding on the Oregon coast that resulted in considerable environmental damage. Neither vessel was required to have a NTVRP at the time of the incident. The NTVRP final rule enhances our national preparedness posture by requiring the development and submission of oil spill response plans that cover thousands of U.S. and foreign vessels when operation on our Nation's waters. This pre-planning will create vital linkages between the shipping industry and oil spill response service providers, such as OSROs, salvage companies, and marine firefighting companies. Pre-planning may also drive an increase in capacity of this vital response service infrastructure. This infrastructure would be available not only for a maritime accident, but also to respond to a natural disaster.

The NTVRP final rule cost is borne by the estimated 12,000+ nontank vessel users of our Nation's waterways with foreign-flag vessels comprising approximately 75 percent of this population. The response services a nontank vessel owner or operator must plan for are scaled to the consequence of an oil spill as represented by the oil capacity of the vessel. The costs are also spread between U.S. and foreign nontank vessels. Approximately 60 percent of this final rule's $263 million 10-year cost is borne by foreign vessel owners/operators.

In summary, the NTVRP final rule is a statutorily-mandated national preparedness document that enhances our oil spill response posture. The NTVRP final rule costs are shared between U.S. and foreign nontank vessels, and are scaled to vessel oil capacity. Public comment did not focus on cost, but rather on ways to improve the requirements.

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

*A. Regulatory Planning and Review*

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

This rule is a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order.

We summarized public comments on the NPRM in section VI of the preamble. As previously discussed, we received public comments on the burden associated with the proposed training and exercise provisions. As a result, we have amended the final rule to allow for vessel owners or operators to submit an Alternative Training and Exercise Program under 33 CFR 155.5061. This alternative approach applies to those vessels subject to this rule and that have an oil capacity less than 250 barrels. This alternative program may reduce the economic impact of the rule on some owners or operators of smaller vessels that find it beneficial to voluntarily develop and submit an alternative program that may provide flexibility for small vessel operations.

We did not receive or find data to quantify the total number of owners or operators of vessels with an oil capacity less than 250 barrels who will take advantage of this alternative program. Our cost analysis for the NPRM assumes all affected nontank vessel owners or operators will perform the full level of training and exercises under 33 CFR 155.5055 and 5060. We did not revise these estimates of training and drilling costs in the NPRM, since we have no data available to quantify the potential reduction in costs and regulatory burden of the alternative program. In addition, we expect this change would be a reduction in the regulatory burden and owners or operators would only take advantage of this voluntary alternative if they receive a reduced regulatory burden below the costs to comply with the full level of training and exercise requirements under 33 CFR 155.5055 and 5060.

We received no other public comments that would alter our assessment of the impacts discussed in the NPRM. We received no additional information or data that would alter our assessment of the impacts of the rule on industry. Therefore, since the alternative program provides flexibility and we received no additional data to change our original estimates of costs and benefits for the NPRM, we adopt the Preliminary Regulatory Analysis for the NPRM as final. A summary of the analysis follows.

The following table summarizes the costs and benefits of this rule.

TABLE 1—SUMMARY OF COSTS AND BENEFITS OF RULE—COSTS *

[$ millions; 7% discount rate]

| | |
|---|---|
| Total Annualized Cost | $37.4 |
| Total 10-year Present Value Cost | $263.0 |
| **Benefits** | |
| *Qualitative:* Improved preparedness and reaction to an incident, including a worst case discharge, and improved effectiveness of shore-side and onboard response activities. | |
| *Quantitative:* Prevent between 2,014 and 2,446 barrels of oil from being spilled over 10-year period of analysis. | |

* Estimates are for both U.S. and foreign-flag vessels. U.S. and foreign-flag vessel cost are also reported separately in this section.

The rule will implement the statutory requirements in 33 U.S.C. 1321(j)(5) for U.S. and foreign-flag vessel owners or operators to prepare and submit oil spill response plans to the Coast Guard. The type of vessels affected will be self-propelled, nontank vessels of 400 gross tons or greater as measured under the convention measurement system or regulatory measurement system, which operate on the navigable waters of the

United States, and carry oil of any kind as fuel for main propulsion.

The rule will specify the content of a response plan, including the requirement to plan for a response to a WCD and a substantial threat of such a discharge. The rule will also specify the procedures for submitting a plan to the Coast Guard.

There are four cost elements associated with this rule: The cost for nontank vessel plan development, maintenance, and submission; the cost for a nontank vessel owner or planholder to obtain the service of an OSRO; the cost for a nontank vessel owner or planholder to contract with a QI along with a SMT; and, the cost for training and exercises.

Based on Coast Guard data, we estimate this rule will affect about 2,951 U.S.-flag vessels and 1,228 associated planholders. We estimate the rule will also affect about 9,264 foreign-flag vessels and about 1,544 associated planholders.

The following estimates use a 7 percent discount rate over a 10-year period of analysis. We estimate for owners or operators of U.S.-flag nontank vessels the present value 10-year costs of this rule to be $111.4 million with annualized costs of about $15.8 million. We estimate for owners or operators of foreign-flag nontank vessels the present value 10-year costs of this rule to be $151.6 million with annualized costs of about $21.6 million. We estimate for all owners or operators of U.S. and foreign-flag nontank vessels the total present value 10-year costs to be about $263 million with annualized costs of about $37.4 million.

We found the training and exercise requirements to be the most costly requirements representing 90 percent of the cost of the rule for vessel owners or operators. Owners or operators of nontank vessels (with an oil capacity less than 250 barrels) that take advantage of the Alternative Training and Exercise Program may reduce their training and exercise costs.

As detailed in the NPRM, we expect this rule to provide quantifiable benefits in the form of barrels of oil not spilled in addition to qualitative benefits, which include improved preparedness and reaction to an incident, including a WCD, and improved effectiveness of onboard and shore-side response activities.

We based quantifiable benefits on a review of marine casualty cases from our Marine Information for Safety and Law Enforcement database for the period 2002–2006 in order to obtain casualty reports involving self-propelled, nontank vessels of 400 gross tons or greater that operated on the navigable waters of the United States and that carried oil of any kind as fuel for main propulsion. We estimated the rule will prevent 2,014 to 2,446 barrels of oil from being spilled during a 10-year period of analysis.

These estimates do not include an evaluation of additional data since 2006 and do not include open cases (investigations) that may have recently closed. These estimates also do not reflect the full socioeconomic benefits of oil spill mitigation and risk reduction associated with nontank vessels, which include avoided damages to the ecosystem and regional and national economic impacts. The Preliminary Regulatory Analysis for the NPRM contains additional discussion of benefits, including qualitative benefits, case studies of notable spills, and other areas of benefits.

*B. Small Entities*

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

*Final Regulatory Flexibility Analysis*

When an agency promulgates a final rule under section 553 of the Regulatory Flexibility Act (RFA), after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency must prepare a final regulatory flexibility analysis (FRFA) or have the head of the agency certify pursuant to RFA section 605(b) that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA prescribes the content of the FRFA in section 604(a), which we discuss below.

(1) A description of the reasons why action by the agency is being considered.

Coast Guard response: This rule will affect an owner or operator of a commercial, self-propelled nontank vessel of 400 gross tons or greater operating on the navigable water of the U.S. that uses oil of any kind as fuel for main propulsion, and is not a tank vessel. These vessel owners would be required to prepare and submit oil spill response plans (NTVRPs) to the Coast Guard much like the requirements in the response plans for tank vessels under 33 CFR part 155, subpart D. The rule will specify the content of a response plan, including the requirement to plan for responding to a worst-case discharge and a substantial threat of such a discharge. The rule will also specify the procedures for submitting a plan to the Coast Guard. Additionally, the rule will update the international Shipboard Oil Pollution Emergency Plan (SOPEP) requirements that apply to certain nontank vessels and tank vessels. The rule will amend or change 33 CFR parts 151 and 155.

(2) The RFA requires a succinct statement of the need for, and objectives of, the rule.

Coast Guard response: Section 311(j)(5) of the FWPCA (33 U.S.C. 1321(j)(5)), as amended by section 4202 of OPA 90; the 2004 Act; and the 2006 Act, sets out the statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States. This rule implements the statutory requirement for an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, to prepare and submit an oil spill response plan to the Coast Guard.

This rule specifies the content of a VRP, including the requirement for owners or operators to plan to respond to a WCD and a substantial threat of such a discharge as mandated in statute. The rulemaking also specifies the procedures for submitting a VRP to the Coast Guard. This rule will improve our nation's pollution response planning and preparedness posture, and help limit the environmental damage resulting from nontank vessel marine casualties.

(3) The RFA requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Coast Guard response: We summarize the public comments we received on the NPRM in section VI of the preamble. We received public comments on the burden associated with the proposed training and exercise provisions. As a result, we have amended the final rule to allow for vessel owners or operators to submit an Alternative Training and Exercise Program under 33 CFR

155.5061. This alternative approach applies to those vessels subject to this rule and that have an oil capacity less than 250 barrels. This alternative program may reduce the economic impact of the rule on some owners or operators of smaller vessels that find it beneficial to voluntarily develop and submit an alternative program that may provide flexibility for small vessel operations. See section VIII. A., ''Executive Order 12866,'' for additional information.

(4) The RFA requires a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

Coast Guard response: This rule will affect owners or operators of commercial, self-propelled nontank vessels of 400 gross tons or greater that operate on the navigable waters of the United States. We expect that a majority of the 2,951 U.S.-flag vessels affected by rule may be owned by small entities based on our analysis.

As detailed in the IRFA for the NPRM, we estimate this rule will affect about 1,228 U.S. companies (entities) that own approximately 2,951 nontank vessels. We researched all 1,228 entities and found entity-specific information on 640 of them (about 52 percent). From our analysis, we determined that 376 of the 640 (about 59 percent) entities are small based on the Small Business Administration (SBA) size criteria of annual revenues and employment data. These 376 small entities own 769 vessels or about two vessels per owner.

Additionally, we did not find revenue and employee size data for the remaining 588 of the 1,228 entities, which precluded us from using those entities in our analysis. Given the lack of data for these entities, we assume that these 588 entities are likely small.

We classified small entities by the North American Industry Classification System (NAICS) code for those entities that had revenue and size data. The 376 small entities with data are represented by 82 different NAICS codes or categories. We determined if a business was small by using the SBA size standards for each NAICS code. We found that 19 NAICS categories represent 287, about 76 percent of the 376 of the small entities that we analyzed. The remaining 24 percent of small entities (89 small entities) are represented by over 60 different NAICS categories with less than 1 percent of the population of small entities in each category.

Based on the 19 NAICS categories that represent 76 percent of the small entities with data, 28 percent or 104 of the 287 small entities are classified by 3 NAICS categories: ''Ship Building and Repairing,'' ''Coastal and Great Lakes Passenger Transportation,'' and ''Inland Water Freight Transportation''. Based on available data, we did not find evidence that small not-for-profit organizations or small government jurisdictions will be impacted by this rule.

(5) The RFA requires a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Coast Guard response: The rule will require reporting, recordkeeping and other compliance requirements under two existing OMB-approved collections: ''Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Requirements for Prince William Sound'' (OMB Control Number 1625–0066) and ''Advance Notice of Vessel Arrival'' (OMB Control Number 1625–0100).

Owners or operators of commercial, self-propelled nontank vessels of 400 gross tons or greater operating on the navigable waters of the United States will be required to submit NTVRPs to the Coast Guard. The Coast Guard has been receiving some NTVRPs from planholders as of August 2005.

The projected reporting and recordkeeping, other compliance requirements of the rule, and types of activities and skills necessary for the preparation of NTVRPs are described in section VIII. D., ''Collection of Information.''

(6) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

Coast Guard response: The Coast Guard did not receive comments on the NPRM from the Chief Counsel for Advocacy of the Small Business Administration.

(7) The RFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Coast Guard response: As previously discussed, based on public comments the Coast Guard will permit owners or operators of nontank vessels with a oil capacity of less than 250 barrels to meet an alternative training and exercise program under 33 CFR 155.5055 and 155.5060, respectively. We expect this change to reduce the economic burden on small business owners or operators.

The Coast Guard presented four alternatives and considered each one carefully before choosing the first alternative, to have owners or operators of nontank vessels submit VRPs to the Coast Guard, based on a tiered approach. Section 311(j)(5) of the FWPCA, 33 U.S.C. 1321(j)(5), as established by section 4202 of OPA 90; and as amended by the 2004 Act, Public Law 108–293, 118 Stat. 102, and the 2006 Act, Public Law 109–241, 120 Stat. 516, sets out a statutory mandate requiring tank and nontank vessel owners or operators to prepare and submit oil or hazardous substance discharge response plans for certain vessels operating on the navigable waters of the United States. For more information, see Section III ''Background'' of the NPRM.

In 33 U.S.C. 1321 (j)(5)(A)(ii), Congress specifically directs the issuance of regulations that require the owner or operator of a nontank vessel to prepare and submit ''a plan for responding, to the maximum extent practicable, to a WCD, and to a substantial threat of such a discharge, of oil.'' The Coast Guard considered four alternatives: Three regulatory alternatives and one non-regulatory alternative. We noted the Congressional mandate for regulations in our explanation of why we did not select the non-regulatory alternative. We present these three alternatives below.

1. Establish Regulations for the Submission of NTVRPs to the Coast Guard

The Coast Guard accepted this alternative that establishes new regulations for nontank vessels in 33 CFR part 155, subpart J. These new regulations are based upon, and refer to, applicable sections of 33 CFR part 155, subpart D, and 33 CFR part 151 (SOPEP). Consistent with applicable FWPCA, title 33 U.S.C. 1321(j)(5), provisions, planholders are required to have a plan that is consistent with the requirements of the NCPs and ACPs; identifies QIs; ensures the availability of response resources by contract or other approved means to remove a WCD and to mitigate or prevent a substantial

threat of such a discharge (this includes ensuring the availability of response resources, such as OSROs, salvage, firefighting, emergency lightering, dispersant, and aerial observation oil tracking resources); describes training, drills, and exercise requirements; and is updated periodically and is resubmitted for approval for each significant change.

We used the discretion Congress provided to set up a tiered approach to classify three separate categories of NTVRP response resource requirements based upon a vessel's oil capacity (greater than or equal to 2,500 barrels, less than 2,500 barrels but greater than or equal to 250 barrels, and less than 250 barrels). This approach avoids across-the-board requirements at a level necessary to respond to WCD oil spills from vessels with oil capacity greater than 2,500 barrels, and thus imposes a lower burden on vessels with a lower oil capacity. Additionally, these new regulations are based upon, and refer to, the SOPEP requirements of 33 CFR 151.26.

Finally, under this alternative, an owner or operator of a nontank vessel would have the opportunity to seek a one-time authorization or waiver to enter a geographic-specific area not covered by a cognizant COTP.

2. Acceptance of Flag-Approved SOPEPs

In evaluating this alternative, we considered accepting flag state-approved SOPEPs. We rejected this alternative, because these SOPEP plans are not consistent with the NCP and the Area Contingency Plans (ACP), as required by the FWPCA. While a SOPEP contains information similar to a NTVRP that can also be useful during a response, it does not include the detailed shorebased response planning mandated by FWPCA nor does it include the requirement to contract for those resources. The preferred alternative incorporates some flexibility in training and contracting requirements for small vessels (predominantly operated by small entities) without undermining the requirements of intent of FWPCA or the NCP and ACPs. The SOPEPs mandated under the international MARPOL protocol and the NTVRPs proposed in this rule should be considered complimentary when planning or executing the response to a discharge, or substantial threat of a discharge, of oil.

3. Remove Consideration of Alternative Drills and Exercises Programs for Small Vessels

A more stringent alternative to the one chosen would be to require all nontank vessels, regardless of fuel capacity, to comply with the detailed drills and training exercises programs defined in § 155.5055 and § 155.5060 (since the Coast Guard does not have information on how many planholders will take advantage of the alternative exercises, the costs presented in this regulatory analysis assume all planholders will perform the full level of exercises outlined in the drills and exercises section of this analysis). The Coast Guard recognizes that small vessels (less than 250 barrels of fuel) pose less of a risk because of several factors. These small vessels have a lesser fuel capacity and normally operate using oils that are less hazardous to the environment. As a result these vessels are normally of simpler design and construction, and carry smaller crews. Unlike larger vessels, these small vessels do not rotate their crews as frequently, and so conducting drills and exercises of reduced frequency can be considered as an alternative to the drills and exercises prescribed in § 155.5055 and 5060. In response to public comments from this segment of the industry, the Coast Guard developed § 155.5061 to provide flexibility to the operators of small vessels. Because of the wide variety of vessels potentially able to take advantage of this provision, the requirements of § 155.5061 are not prescriptive. Based on similar provisions in MTSA, the Coast Guard estimates about 1,288 vessels covered or owned by about 237 planholders may be able to reduce their training burden by as much as 75% annually (if owners choose to perform the QI notification drill once per year instead of quarterly) for QI notification drills and perform SMT exercises biennially instead of annually. Assuming all 237 planholders choose the frequencies described previously, we estimate the cost savings to industry for all 1,228 planholders estimated for this analysis to be about $180,000 annually for QI notification drills and about $1.1 million annually for SMT exercises every other year, or a grand total of about $1.3 million biennially. We estimate the cost savings to industry over the 10-year period of analysis to be between $5.0 and $6.2 million at seven and three percent discount rates, respectively.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander John Peterson at 202–372–1226 or *vrp@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rulemaking relates to two existing OMB-approved collections of information, 1625–0066, revisions for which are pending OMB approval, and 1625–0100, revisions for which are approved by OMB. Details are provided below.

*OMB Control Number:* 1625–0066.

*Title:* Vessel and Facility Response Plans (Domestic and Int'l), and Additional Response Requirements for Prince William Sound, Alaska.

*Summary of the Collection of Information:* In general, this collection relates to both domestic and international response plan requirements for vessels and facilities. In particular, a nontank vessel owner or operator needs to prepare and submit to the Coast Guard a nontank vessel response plan in accordance with 33 CFR part 155, subpart J. The content of the response plan includes the requirement to plan for responding to a WCD and a substantial threat of such a

discharge. Additionally, submissions of international SOPEPs for certain U.S.-flag nontank and tank vessels requires alignment with updated SOPEP rules.

*Need for Information:* The information is necessary to show evidence that planholders have properly planned to prevent or mitigate oil outflow and to provide information to the Coast Guard for its use in emergency response.

*Proposed Use of Information:* The Coast Guard will use the information to determine whether a nontank vessel response plan meets the requirements set forth in new 33 CFR part 155, subpart J.

*Description of the Respondents:* The respondents are nontank vessel response planholders and SOPEP planholders.

*Number of Respondents:* This rule accounts for 2,772 respondents.

*Frequency of Response:* The frequency of response is about 1 response per respondent per year. For those respondents that seek an alternative or waiver, there would be an additional response per request.

*Burden of Response:* The burden of response is a range of 1 to 100 hours per NTVRP activity (i.e., initial plan development, plan revision, annual recordkeeping, 5-year resubmission, alternative/waiver request).

*Estimate of Total Annual Burden:* The estimated NTVRP total annual burden is 33,688 hours. Of that burden, the alternatives/waivers element of this rule accounts for 202 hours.

As required by 44 U.S.C. 3507(d), we submitted a copy of the rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, we are not making §§ 155.5023, 155.5025, and 155.5055 through 155.5075 effective until OMB completes action on our information collection request, at which time we will publish a **Federal Register** notice describing OMB's action and, if OMB grants approval, notifying you when these provisions take effect.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*OMB Control Number:* 1625–0100.

*Title:* Advance Notice of Vessel Arrival.

*Summary of the Collection of Information:* The Coast Guard requires pre-arrival notices from certain vessels entering a port or place of the United States. This rule would add one new data element (the VRP control number) to the 40 data elements that are currently required by 33 CFR part 160.

*Need for Information:* In general, the Coast Guard uses notice of arrival information to ensure port safety and security, and to ensure the uninterrupted flow of commerce. In particular, the addition of the VRP control number enables the Coast Guard to determine if the vessel has an authorized GSA for each COTP zone through which the vessel intends to transit.

*Proposed Use of Information:* In general, response plan information is required to control vessel traffic, develop contingency plans, and enforce regulations. In particular, for those vessels that are covered by more than one response plan, submission of the VRP control number as part of advance notice of vessel arrival information will notify the Coast Guard as to which plan they are operating under.

*Description of the Respondents:* Respondents are the owner, agent, master, operator, or person in charge of a vessel that arrives at a port or place of the United States.

*Number of Respondents:* The existing OMB-approved number of respondents is 31,594. This rule does not change that number. The total number of respondents would remain 31,594.

*Frequency of Response:* The existing OMB-approved number of responses is 171,016. This rule does not change that number. The total number of responses would remain 171,016.

*Burden of Response:* The existing OMB-approved burden of response is approximately 1 hour (60 minutes) per response. The additional burden imposed by this rule is estimated to be so minimal that it does not merit changing the approved collection. For this collection, we propose to add one data element, the VRP control number, to the currently required 40 data elements for the notice of arrival. The VRP control number is a ''static'' data element issued once every 5 years or longer, while some of the 40 other data elements change with each voyage (such as last port of call, cargo, or crew list). Therefore, we believe the 60-minute burden currently approved for this collection more than adequately covers the post rulemaking 41 data elements, and the burden of response should remain unchanged.

*Estimate of Total Annual Burden:* The existing OMB-approved total annual burden is 164,144 hours. Because the additional burden imposed by this rule is estimated to be so minimal, it does not merit changing the approved annual burden. The estimated total annual burden would remain 164,144 hours.

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to OMB for its review of the collection of information. OMB has approved this collection (ICR Ref. No. 201012–1625–002). The section number associated with the collection of information is § 160.206, and the corresponding approval number from OMB is OMB Control Number 1625–0100, which expires on December 31, 2013.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, or 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

This rule describes the standards to which nontank vessel owners or operators will adhere when preparing and submitting plans for responding to a discharge of oil from their vessels. This rule will not preempt the various State laws on this topic. We drafted this rule to ensure that, to the extent practicable, it is consistent with any applicable State-mandated response plan in effect on August 9, 2004. We contacted the National Conference of State Legislatures to circulate the NPRM to the States for their awareness of the proposal. We conducted a search of State laws addressing NTVRPs and conclude that no State law is preempted by this final rule.

*F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*G. 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.

*H. 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.

*I. 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 a risk to safety that may disproportionately affect children.

*J. 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.

*K. Energy Effects*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order. Though it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*L. Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards:

- IMO Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), November 4, 1993.
- IMO Resolution A.851(20), General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, November 27, 1997.
- IMO Resolution MSC.104(73), Adoption of Amendments to the International Safety Management (ISM) Code, December 5, 2000.
- Oil Companies International Marine Forum's Ship to Ship Transfer Guide (Petroleum), Fourth Edition 2005.

The sections that reference these standards and the locations where these standards are available are listed in § 155.140.

*M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 is categorically excluded under section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002).'' This rule involves Congressionally mandated regulations designed to protect the environment, specifically regulations implementing the requirements of the Coast Guard and Marine Transportation Act of 2004/2006. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects**

*33 CFR part 151*

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*33 CFR part 155*

Administrative practice and procedure, Alaska, Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR part 160*

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 151, 155, and 160 as follows:

## PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063) sec. 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2 (77).

■ 2. In § 151.09, add a note to paragraph (b), remove the note from under paragraph (c)(3), and revise paragraph (d) to read as follows:

**§ 151.09 Applicability.**

* * * * *

(b) * * *

**Note to § 151.09(b):** The term ''internal waters'' is defined in § 2.24 of this chapter.

* * * * *

(d) The requirements of §§ 151.26 through 151.28—

(1) Do not apply to—

(i) The ships specified in paragraph (b) of this section; and

(ii) Any barge or other ship, which is constructed or operated in such a manner that no oil in any form can be carried aboard.

(2) Are considered to be met if a U.S.-flag vessel holds a USCG-approved vessel response plan and provides evidence of compliance with 33 CFR part 155, subpart D or J requirements.

* * * * *

■ 3. In § 151.26—

■ a. In paragraph (b)(1)(i), in the first paragraph of the sample language,

remove the words ''Regulation 26'' and add, in their place, the words ''Regulation 37''; and insert the words ''as amended by Resolution MEPC.86(44)'' immediately after ''MEPC.54(32)'';

■ b. Revise paragraph (b)(2);

■ c. Revise paragraphs (b)(3)(i)(A) and (b)(3)(ii);

■ d. Add two sentences to paragraph (b)(3)(iii)(A)

■ e. Add paragraph (b)(3)(iii)(D);

■ f. Revise paragraphs (b)(4)(i),(b)(4)(ii), and (b)(4)(iii)(B);

■ g. In paragraph (b)(4)(iii)(C) after the words ''as appropriate'', remove the character ''.'' and add, in its place, the character '';'';

■ h. Add paragraphs (b)(4)(iii)(D) and (E);

■ i. Revise paragraph (b)(5)(i);

■ j. Remove paragraph (b)(7)(i); and

■ k. Redesignate paragraphs (b)(7)(ii) through (vi) as (b)(7)(i) through (v).

The revisions and additions read as follows:

**§ 151.26 Shipboard oil pollution emergency plans.**

* * * * *

(b) * * *

(2) *Preamble.* The plan must be realistic, practical, and easy to use, and the Preamble section of the plan must reflect these three features of the plan. The use of flowcharts, checklists, and appendices within the plan will aid in addressing this requirement. This section must contain an explanation of the purpose and use of the plan and indicate how the shipboard plan relates to other shore-based plans. Additionally, the Preamble section of the plan must clearly recognize coastal States' rights to approve oil pollution response in their waters by stating the following:

Without interfering with shipowner's liability, some coastal States consider that it is their responsibility to define techniques and means to be taken against an oil pollution incident and approve such operations that might cause further pollution, i.e., lightening. States are entitled to do so under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Intervention Convention).

* * * * *

(3) * * *

(i) * * *

(A) A discharge of oil above the permitted level for any reason, including those for the purpose of securing the safety of the ship or saving life at sea;

* * * * *

(ii) *Information required.* This section of the plan must include a notification form, such as the one depicted in Table 151.26(b)(3)(ii), that includes all the data elements required in Resolution A.851(20) and contains information to be provided in the initial and follow-up notifications. The official number of the vessel and current conditions of the vessel are to be included. In addition, the initial notification should include as much of the information on the form as possible, and supplemental information, as appropriate. However, the initial notification must not be delayed pending collection of all information. Copies of the form must be placed at the location(s) on the ship from which notification may be made.

* * * * *

(iii) * * *

(A) * * * In order to expedite response and minimize damage from a pollution incident, it is essential that appropriate coastal States should be notified without delay. This process begins with the initial report required by article 8 and Protocol I of MARPOL 73/78.

* * * * *

(D) The plan must clearly specify who will be responsible for informing the necessary parties from the coastal State contacts, the port contacts, and the ship interest contacts.

(4) * * *

(i) Operational spills: The plan must outline procedures for safe removal of oil spilled and contained on deck. The plan must also provide guidance to ensure proper disposal of recovered oil and cleanup materials;

* * * * *

(ii) Spills resulting from casualties: Casualties should be treated in the plan as a separate section. The plan should include various checklists or other means that will ensure the master considers all appropriate factors when addressing the specific casualty (Reference is made here to the International Safety Management (ISM) Code, Section 8). These checklists must be tailored to the specific ship and to the specific product or product types. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities. The following are examples of casualties that must be considered—

(A) Grounding;

(B) Fire or explosion;

(C) Collision/Allision;

(D) Hull failure;

(E) Excessive list;

(F) Containment system failure;

(G) Submerged/Foundered;

(H) Wrecked/Stranded; and

(I) Hazardous vapor release.

(iii) * * *

(B) Stability and strength considerations: The plan should provide the master with detailed guidance to ensure that great care in casualty response must be taken to consider stability and strength when taking actions to mitigate the spillage of oil or to free the vessel if aground. Information for making damage stability and longitudinal strength assessments, or contacting classification societies to acquire such information, should be included. Where appropriate, the plan should provide a list of information for making damage stability and damage longitudinal strength assessments. The damage stability information for oil tankers and offshore oil barges in 33 CFR 155.240 is required to be provided in the SOPEP;

* * * * *

(D) Mitigating activities: The spill mitigation requirements of 33 CFR 155.1035(c) must be met for tankships, the requirements of 33 CFR 155.1040(c) must be met for unmanned vessels, and the requirements of 33 CFR 155.5035(c) must be met for nontank vessels. Additionally, the following personnel safety mitigation strategies must be addressed for all personnel involved—

(1) Assessment and monitoring activities;

(2) Personnel protection issues;

(3) Protective equipment;

(4) Threats to health and safety;

(5) Containment and other response techniques;

(6) Isolation procedures;

(7) Decontamination of personnel; and

(8) Disposal of removed oil and clean-up materials; and

(E) Drawings and ship-specific details: Supporting plans, drawings, and ship-specific details such as a layout of a general arrangement plan, midship section, lines or tables of offsets, and tank tables must be included with the plan. The plan must show where current cargo, bunker or ballast information, including quantities and specifications, is available.

(5) * * *

(i) This section of the plan must contain information to assist the master in initiating action by the coastal State, local government, or other involved parties. This information must include guidance to assist the master with organizing a response to the incident, should a response not be organized by the shore authorities. Detailed information for specific areas may be included as appendices to the plan. See 33 CFR 151.26(b)(2) (Preamble)

regarding a ship owner's responsibility to comply with individual state requirements for oil spill response.

* * * * *

■ 4. In § 151.27, revise paragraphs (e) and (f) and add paragraphs (g) and (h) to read as follows:

**§ 151.27 Plan submission and approval.**

* * * * *

(e) If the Coast Guard determines that the plan meets the requirements of this section, the Coast Guard will issue an approval letter. The approval period for a plan expires 5 years after the approval date.

(f) If the Coast Guard determines that the plan does not meet the requirements, the Coast Guard will notify the owner or operator of the plan's deficiency. The owner or operator must then resubmit a copy of the revised plan or the corrected portions of the plan, within the time period specified in the written notice provided by the Coast Guard.

(g) Plans, including revisions, should be submitted electronically by using the Vessel Response Plan Electronic Submission Tool available at *https://homeport.uscg.mil/vrpexpress.*

(h) If plans are submitted in paper format, owners or operators should use CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* in lieu of a cover letter to make initial application for plan submission and revision.

■ 5. In § 151.28, add paragraphs (g) and (h) to read as follows:

**§ 151.28 Plan review and revision.**

* * * * *

(g) Plans, including revisions, should be submitted electronically by using the Vessel Response Plan Electronic Submission Tool available at *https://homeport.uscg.mil/vrpexpress.*

(h) If plans are submitted in paper format, owners or operators should use CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* in lieu of a cover letter to request the required resubmission, plan amendment, or revision.

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 6. The authority citation for part 155 is revised to read as follows:

**Authority:** 3 U.S.C. 301 through 303; 33 U.S.C. 1225, 1231, 1321(j), 1903(b), 2735; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 155.480 also issued under section 4110(b) of Pub. L. 101.380.

**Note:** Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 40, 150, 151, and 153.

■ 7. In § 155.140—

■ a. Redesignate paragraph (d)(2) as (d)(4);

■ b. Add paragraphs (d)(2), (d)(3), and (d)(5); and

■ c. Add paragraph (f)(2).

The additions read as follows:

**§ 155.140 Incorporation by reference.**

* * * * *

(d) * * *

(2) Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), adopted 4 November, 1993, incorporation by reference approved for § 155.5035.

(3) Resolution A.851(20), General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants, adopted 27 November, 1997, incorporation by reference approved for § 155.5035.

* * * * *

(5) Resolution MSC.104(73), Adoption of Amendments to the International Safety Management (ISM) Code, adopted 5 December, 2000, incorporation by reference approved for § 155.5035.

* * * * *

(f) * * *

(2) Ship to Ship Transfer Guide (Petroleum), Fourth Edition, 2005, incorporation by reference approved for § 155.5035.

■ 8. In § 155.1015, revise paragraph (c)(7), add paragraph (c)(8), and add a note to the end of the section to read as follows:

**§ 155.1015 Applicability.**

* * * * *

(c) * * *

(7) Foreign-flag vessels engaged in innocent passage through the territorial sea or transit passage through a strait used for international navigation, unless bound for or departing from a port or place of the United States.

(8) Vessels carrying oil as a secondary cargo and measuring 400 gross tons or greater.

* * * * *

**Note to § 155.1015:** Response plan requirements for nontank vessels are found in subpart J of this part.

■ 9. In § 155.1020, add a definition for ''nontank vessel'', in alphabetical order, to read as follows:

**§ 155.1020 Definitions.**

* * * * *

*Nontank vessel* means a vessel meeting the description provided in 33 CFR 155.5015(a).

* * * * *

■ 10. In § 155.1030, revise paragraphs (i)(1) through (3) to read as follows:

**§ 155.1030 General response plan requirements.**

* * * * *

(i) * * *

(1) The vessel owner or operator must ensure that they maintain one English language copy of the VRP, at a minimum the contents listed in paragraph (c)(1), (2), (3), (5), (6), (7), (9), and (10) of this section and a copy of the Coast Guard approval letter, onboard the vessel. In lieu of paper format, the vessel owner or operator may keep an electronic copy of the VRP and approval letter onboard the vessel. If applicable, additional copies of the required VRP sections must be in the language understood by crew members with responsibilities under the VRP and maintained onboard the vessel.

(2) The owner or operator of all unmanned tank barges shall ensure that one English language copy of the plan section listed in paragraph (c)(9) of this section and the Coast Guard approval letter is maintained aboard the barge. An electronic copy of the VRP is authorized.

(3) The vessel owner or operator must maintain a current copy of the entire plan, and ensure that each person identified as a qualified individual and alternate qualified individual in the plan has a current copy of the entire plan. An electronic copy of the VRP is authorized.

* * * * *

**§ 155.1035 [Amended]**

■ 11. In § 155.1035—

■ a. In paragraph (e)(3), remove the word ''representatives'' and add in its place the words ''provider, representative,''; and remove the word ''surveyors'' and add in its place the word ''surveyor''; and

■ b. In paragraph (e)(4), after the words ''area of operation'' add the words ''or a reference to the 24-hour point of contact as listed on the vessel's notice of arrival''.

**§ 155.1055 [Amended]**

■ 12. In § 155.1055(a), remove the text ''§ 155.1035'' and add in its place the text ''§§ 155.1035 or 155.5035''.

**§ 155.1060 [Amended]**

■ 13. In § 155.1060(a), remove the words ''§§ 155.1035 and 155.1040'' and add in their place the words ''§§ 155.1035, 155.1040, or 155.5035''.

■ 14. In § 155.1065—

■ a. In paragraph (a), after the words ''plan to Commandant'' add the words ''electronically by using the Vessel Response Plan Electronic Submission Tool available at *http://evrp.uscg.mil* or by mail to Commandant'';

■ b. In paragraph (b), remove the words ''subparts D, E, F, and G of this part'' and add in their place the words ''subparts D, E, F, G, and J of this part''; and after the words ''secondary cargo.''; and

■ c. In paragraph (b), add a sentence.

The addition reads as follows:

**§ 155.1065 Procedures for plan submission, approval, requests for acceptance of alternative planning criteria, and appeal.**

* * * * *

(b) * * * For plans submitted in paper format, CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* meets the requirement for a vessel response plan certification statement as required by this paragraph.

* * * * *

■ 15. In § 155.1070—

■ a. In paragraph (a)(2), add a sentence;

■ b. Revise paragraph (b);

■ c. Revise paragraphs (c)(1), (2), (4), (5), and (8);

■ d. Revise paragraph (d);

■ e. In paragraph (f), remove the words ''Prevention Policy Directorate for Marine Safety, Security, and Stewardship'' and add in their place the words ''Office of Commercial Vessel Compliance''; and remove the text ''CG–54'' and add in its place the text ''CG–CVC'';

■ f. Remove paragraph (i); and

■ g. Redesignate paragraphs (g) as (h) and paragraphs (h) as (i) and add new paragraph (g).

The revisions and additions read as follows:

**§ 155.1070 Procedures for plan review, revision, amendment, and appeal.**

(a) * * *

(2) * * * Although plans should be submitted electronically, for plans submitted in paper format, CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* should be used in lieu of a cover letter to request the required resubmission, plan amendment, or revision and to document the annual review required by this paragraph (a).

(b) The vessel owner or operator subject to subparts D, E, F, G, or J of this part must resubmit the entire plan to the Coast Guard for approval—

(1) Six months before the end of the Coast Guard approval period identified in § 155.1065(c) or § 155.5065(c); and

(2) Whenever there is a change in the vessel owner or operator, if the previous vessel owner or operator provided the certifying statement required by § 155.1065(b) or § 155.5065(b), then the new vessel owner or operator must submit a new statement certifying that the plan continues to meet the applicable requirements of subparts D, E, F, G, or J of this part.

(c) * * *

(1) A change in the vessel owner or operator, if that vessel owner or operator is not the one who provided the certifying statement required by § 155.1065(b) or § 155.5065(b);

(2) A change in the vessel's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A vessel may operate in an area not covered in a previously approved plan upon receipt of written acknowledgment by the Coast Guard that a new geographic-specific appendix has been submitted for approval by the vessel's owner or operator and the certification required in § 155.1025(c)(2) or § 155.5023(b) has been provided;

* * * * *

(4) A change in the type of oil carried onboard (oil group) that affects the required response resources, except as authorized by the COTP for purposes of assisting in an oil spill response activity;

(5) A change in the identification of the oil spill removal organization(s) or other response-related resource required by § 155.1050, § 155.1052, § 155.1230, § 155.2230, § 155.5050, or § 155.5052 as appropriate, except an oil spill removal organization required by § 155.1050(d) or § 155.5050(d) that may be changed on a case-by-case basis for an oil spill removal organization previously classified by the Coast Guard, which has been ensured to be available by contract or other approved means;

* * * * *

(8) The addition of a vessel to the plan. This change must include the vessel-specific appendix required by this subpart and the vessel owner or operator's certification required in § 155.1025(c) or § 155.5023(b); or

* * * * *

(d) Thirty days in advance of operation, the vessel owner or operator must submit any revision or amendments identified in paragraph (c) of this section. The certification required in § 155.1065(b) or § 155.5065(b) must be submitted along with the revisions or amendments.

* * * * *

(g) Within 21 days of notification that a plan is not approved, the vessel owner or operator may appeal that determination to the Director of Inspections and Compliance (CG–5PC). This appeal must be submitted in writing to Commandant (CG–5PC), Director of Inspections and Compliance, U.S. Coast Guard, 2100 2nd St. SW Stop 7581, Washington, DC 20593–7581.

* * * * *

■ 16. In § 155.4010—

■ a. In paragraph (a), remove the reference ''§ 155.1015'' and add in its place the references ''§§ 155.1015 and 155.5015''; and remove the second sentence;

■ b. Redesignate paragraph (b) as paragraph (c); and

■ c. Add new paragraph (b) to read as follows:

**§ 155.4010 Purpose of this subpart.**

* * * * *

(b) *Salvage* and *marine firefighting* actions can save lives and property, and prevent the escalation of potential oil spills to worst case discharge scenarios.

* * * * *

**§ 155.4015 [Amended]**

■ 17. In § 155.4015, in the introductory text, remove the reference ''§ 155.1015'' and add in its place ''§ 155.1015 or § 155.5015''.

■ 18. In § 155.4020 —

■ a. Redesignate paragraph (a) as paragraph (a)(1), paragraph (b) as paragraph (a)(2), paragraph (c) as paragraph (a)(3), paragraph (c)(1) as paragraph (a)(3)(i), paragraph (c)(2) as paragraph (a)(3)(ii), paragraph (c)(3) as paragraph (a)(3)(iii), paragraph (c)(4) as paragraph (a)(3)(iv), and paragraph (c)(5) as paragraph (a)(3)(v);

■ b. In newly redesignated paragraph (a)(1), after the words ''approved vessel response plan'' add the words ''required by § 155.1015''; and

■ c. Add paragraph (b) to read as follows:

**§ 155.4020 Complying with this subpart.**

* * * * *

(b) If § 155.5015 requires that you have a vessel response plan, you must

have your vessel response plan submitted to the Coast Guard by January 30, 2014.

**§ 155.4025 [Amended]**

■ 19. In § 155.4025, in the definition for ''Contract or other approved means'', in paragraph (1)(iii), after the words ''33 CFR 155.1065(f)'' add the words ''and 155.5067(a)''.

**§ 155.4030 [Amended]**

■ 20. In § 155.4030—

■ a. In paragraph (a), remove the words ''§§ 155.1035(e)(6)(ii) and 155.1040(e)(5)(ii),'' and add, in their place, the words ''§§ 155.1035(e)(6)(ii), 155.1040(e)(5)(ii), and 155.5035(e)(6)(ii),'';

■ b. In paragraph (c), remove the words ''§§ 155.1035(d), 155.1040(d) and 155.1045(d)'' and add, in their place, the words ''§§ 155.1035(d), 155.1040(d), 155.1045(d), and 155.5035(d)'';

■ c. In paragraph (d), remove the words ''§ 155.1030(h)'' and add, in their place, the words ''§§ 155.1030(h) and 155.5030(f)'';

■ d. In paragraph (f), after the words ''vessel's largest cargo'' add the words ''or fuel''; and after the word ''tank'' add the words '', whichever is greater,'';

■ e. In paragraph (g), after the words ''needed to combat'' remove the word ''a'' and add, in its place, the words ''an oil''; and after the words ''your vessel's cargo,'' add the word ''fuel,''; and

■ f. In paragraph (h), after the words ''capability of removing'', add the words ''bulk liquid''.

**§ 155.4035 [Amended]**

■ 21. In § 155.4035(a), remove the words ''§§ 155.1035(c) and 155.1040(c)'' and add, in their place, the words ''§§ 155.1035(c), 155.1040(c), and 155.5035(c)''.

**§ 155.4052 [Amended]**

■ 22. In § 155.4052—

■ a. In paragraph (a), remove the words ''§§ 155.1035 and 155.1040'' and add, in their place, the words ''§§ 155.1035, 155.1040, and 155.5035''; and

■ b. In paragraph (b)(7), after the words ''33 CFR 155.1060(a)'' add the words ''and 155.5061''; and after the words ''33 CFR 155.1065'' add the words ''and 155.5065''.

■ 23. Add subpart J, consisting of §§ 155.5010 through 155.5075, to read as follows:

**Subpart J—Nontank Vessel Response Plans**

Sec.
155.5010 Purpose.
155.5012 Deviation from response plan.
155.5015 Applicability.
155.5020 Definitions.
155.5021 Operating restrictions.
155.5023 Interim operating authorization.
155.5025 One-time port waiver.
155.5026 Qualified individual and alternate qualified individual.
155.5030 Nontank vessel response plan requirements: General content.
155.5035 Nontank vessel response plan requirements: Specific content.
155.5050 Response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil.
155.5052 Response plan development and evaluation criteria for nontank vessels carrying group V petroleum oil.
155.5055 Training.
155.5060 Exercises.
155.5061 Alternative Training and Exercise Program.
155.5062 Inspection and maintenance of response resources.
155.5065 Procedures for plan submission and approval.
155.5067 Alternative planning criteria.
155.5070 Procedures for plan review, revision, and amendment.
155.5075 Appeal procedures.

## Subpart J—Nontank Vessel Response Plans

**§ 155.5010 Purpose.**

The purpose of this subpart is to establish requirements for oil spill response plans for nontank vessels. The planning criteria in this subpart are intended for use in nontank vessel oil spill response plan development and the identification of resources necessary to respond to a nontank vessel's worst case discharge or substantial threat of such a discharge. The development of a nontank vessel response plan prepares the vessel's crew and ship management to respond to an oil spill. The specific criteria for response resources and their arrival times are not performance standards. They are planning criteria based upon a set of assumptions that may not exist during an actual oil spill incident. Note to § 155.5010: For nontank vessels that are mobile offshore drilling units (MODUs), additional oil spill planning standards are found in 30 CFR part 254.

**§ 155.5012 Deviation from response plan.**

The owner or operator of a nontank vessel required to have a vessel response plan (VRP) under this subpart may not deviate from the approved VRP unless the President or Federal On-Scene Coordinator determines that the deviation from the VRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

**§ 155.5015 Applicability.**

(a) Except as provided in paragraph (d) of this section, this subpart applies to each self-propelled vessel that—

(1) Carries oil of any kind as fuel for main propulsion;

(2) Is not a tank vessel or is not certificated as a tank vessel;

(3) Operates upon the navigable waters of the United States, as defined in 46 U.S.C. 2101(17a); and

(4) Is 400 gross tons or more as measured under the convention measurement system in 46 U.S.C. 14302 or the regulatory measurement system of 46 U.S.C. 14502 for vessels not measured under 46 U.S.C. 14302.

(b) This subpart also applies to vessels carrying oil as secondary cargo and that meet the requirements of paragraph (a) of this section.

(c) For Integrated Tug Barge (ITB) units that are not certificated as tank vessels, the tonnage used to determine applicability of these regulations is the aggregate tonnage of the ITB combination, and the oil capacity used to determine the worst case discharge volume is the aggregate oil capacity of the ITB combination.

(d) This subpart does not apply to the following types of vessels—

(1) Public vessels;

(2) Foreign-flag vessels engaged in innocent passage through the territorial sea or transit passage through a strait used for international navigation, unless bound for or departing from a port or place of the United States;

(3) Vessels that carry oil as a primary cargo and are required to submit a vessel response plan (VRP) in accordance with 33 CFR part 155, subpart D;

(4) Vessels constructed or operated in such a manner that no oil in any form can be carried onboard as fuel for propulsion or cargo;

(5) Permanently moored craft; and

(6) Inactive vessels.

Note to § 155.5015: VRP requirements for tank vessels are found in subpart D of this part.

**§ 155.5020 Definitions.**

Except as otherwise defined in this section, the definitions in §§ 155.110 and 155.1020 apply to this subpart. For the purposes of this subpart only, the term—

*Cargo* means oil, not carried as fuel, which is carried in bulk, and that is transported to and off-loaded at a port or place by a vessel. It does not include—

(1) Oil carried in integral tanks, marine portable tanks, or independent tanks for use by machinery, helicopters, and boats carried onboard the vessel, or for use by helicopters that are directly supporting the vessel's primary operations;

(2) Oil transferred from a towing vessel to a vessel in its tow to operate

installed machinery other than the propulsion plant; or

(3) Oil recovered during oil spill response operations.

*Contract or other approved means* includes—

(1) A written contractual agreement between a vessel owner or operator and a required response resource provider. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the applicable Captain of the Port (COTP) zone or specified geographic areas;

(2) Certification by the vessel owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the vessel owner or operator, and are available within stipulated response times in the applicable COTP zone or specified geographic areas;

(3) Active membership with a local or regional required response resource provider that has identified specific personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the COTP zone or specified geographic areas;

(4) A document that—

(i) Identifies the personnel, equipment, and services capable of being provided by the required response resource provider within stipulated response times in the COTP zone or specified geographic areas;

(ii) Sets out the parties' acknowledgment that the required response resource provider intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and exercises; and

(iv) Is referenced in the vessel response plan; or

(5) With the written consent of the required response resource provider, the identification of a required response resource provider with specified equipment and personnel that are available within stipulated response times in the COTP zone, port area, or specified geographic area. This paragraph is ''other approved means'' for only—

(i) Nontank vessels with a fuel and cargo oil capacity of less than 250 barrels for maximum most probable discharge oil spill removal response resource requirements per 33 CFR 155.5050(e);

(ii) Nontank vessels that carry group I through group IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for salvage, emergency lightering, and marine firefighting response resources per 33 CFR 155.5050(i)(2);

(iii) Nontank vessels that carry group I through group IV petroleum oils as fuel or cargo with a capacity less than 250 barrels for salvage response resources in 33 CFR 155.5050(i)(3);

(iv) Nontank vessels that carry group II through group IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for dispersant response resources per 33 CFR 155.5035(i)(7) and 33 CFR 155.5050(j); and

(v) Nontank vessels that carry groups I through IV petroleum oils as fuel or cargo with a capacity of 250 barrels or greater, but less than 2,500 barrels, for aerial oil spill tracking to support oil spill assessment and cleanup activities per 33 CFR 155.5050(k).

*Fuel* means all oils of any kind, which may be used to supply power or lubrication for primary or auxiliary purposes onboard the vessel in which it is carried.

*Inactive vessel* means a vessel that is out of service or laid up and has emptied its tanks of fuel except for the minimum amount of fuel necessary for the maintenance of the vessel's material condition. Such a vessel is considered not to be operating on the navigable waters of the United States for the purposes of 33 U.S.C. 1321(j)(5), unless the cognizant COTP determines that it poses an unacceptable risk to the marine environment due to the amount of oil carried for maintenance. A vessel would not be considered inactive if it carried oil as a cargo or cargo residue.

*Integrated Tug Barge* or *ITB* means any tug barge combination in which a specially designed propulsion unit (tug) is mated to a cargo unit (barge) of a compatible special design or where a propulsion unit (tug) is mated to a cargo unit (barge) with a specially designed connection system such that the combined unit has operating characteristics and seakeeping capabilities that exceed, under all anticipated weather conditions, those of a tug and barge, where the tug is secured in the barge notch or on fenders by means such as wire rope, chains, lines, or other tackle now commonly used in offshore towing.

*Maximum most probable discharge* or *MMPD* means a discharge of—

(1) Two thousand five hundred (2,500) barrels of oil, for vessels with a fuel and cargo capacity equal to or greater than 25,000 barrels; or

(2) Ten percent of the vessel's fuel and cargo capacity, for vessels with a fuel and cargo capacity of less than 25,000 barrels.

*Navigable waters of the United States* means navigable waters of the United States as defined in 33 CFR 2.36(b)(1), including the waters in 46 U.S.C. 2101(17a).

*Nontank vessel* means a vessel meeting the description provided in 33 CFR 155.5015(a).

*Oil spill removal organization* or *OSRO* means any person or persons who own(s) or otherwise control(s) oil spill removal resources that are designed for, or are capable of, removing oil from the water or shoreline. Control of such resources through means other than ownership includes leasing or subcontracting of equipment or, in the case of trained personnel, by having contracts, evidence of employment, or consulting agreements. OSROs provide response equipment and services, individually or in combination with subcontractors or associated contractors, under contract or other approved means, directly to a vessel owner or operator of a vessel or a facility required to have a response plan under 33 U.S.C. 1321(j)(5). OSROs are able to mobilize and deploy equipment or trained personnel and remove, store, and transfer recovered oil. Persons such as sales and marketing organizations (e.g., distributorships and manufacturer's representatives) that warehouse or store equipment for sale are not OSROs.

*P&I Club* means a protection and indemnity insurance group that provides liability insurance cover for the vessel owner or operator that would respond to an oil discharge or substantial threat of such a discharge by the vessel.

*Permanently moored craft* means a watercraft that is not considered to be a vessel under the rule of construction in 1 U.S.C. 3, because it is not practically (as opposed to theoretically) used or capable of being used as a means of transportation on the water.

*Public vessel* means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

*Qualified individual* or *QI* and *alternate qualified individual* means a shore-based representative of a vessel owner or operator who meets the requirements of 33 CFR 155.5026.

*Substantial threat of such a discharge* means any incident involving a vessel that may create a significant risk of discharge of fuel or cargo oil. Such incidents include, but are not limited to, groundings, allisions, strandings, collisions, hull damage, fires,

explosions, loss of propulsion, floodings, on-deck spills, or other similar occurrences.

*Tier* means the combination of required response resources and the times within which the resources must arrive on scene. Appendix B of this part, especially Tables 5 and 6, provide specific guidance on calculating the response resources required by a respective tier. Section 155.5050(g) sets forth the required times within which the response resources must arrive on scene. Tiers are applied to three categories of areas—

(1) Higher volume port areas;

(2) The Great Lakes; and

(3) All other operating environments, including rivers and canals, inland, nearshore, offshore, and open ocean areas.

*Transfer* means any movement of oil to or from a vessel by means of pumping, gravitation, or displacement. A transfer is considered to begin when the person in charge of the transferring vessel or facility and the person in charge of the receiving facility or vessel first meet to begin completing the declaration of inspection required by 33 CFR 156.150. A transfer is considered to be complete when all the connections for the transfer have been uncoupled and secured with blanks or other closure devices and both of the persons in charge have completed the declaration of inspection to include the date and time they complete the transfer.

*Worst case discharge* or *WCD* means a discharge in adverse weather conditions of a vessel's entire fuel or cargo oil, whichever is greater.

**§ 155.5021 Operating restrictions.**

Nontank vessels subject to this subpart may not—

(a) Operate upon the navigable waters of the United States unless in compliance with a vessel response plan (VRP) approved under § 155.5065.

(b) Continue to operate on the navigable waters of the United States if—

(1) The Coast Guard determines that the response resources identified in the vessel's certification statement do not meet the requirements of this subpart;

(2) The contracts or agreements required in §§ 155.5050 and 155.5052 and the vessel's certification statement are no longer valid;

(3) The vessel is not operating in compliance with the submitted VRP; or

(4) The period of the VRP authorization has expired.

**§ 155.5023 Interim operating authorization.**

(a) Notwithstanding the requirements of § 155.5021 of this subpart, a vessel may continue to operate for up to 2 years after the date of submission of a vessel response plan (VRP) pending approval of that VRP, if the vessel has received written authorization for continued operations from the Coast Guard.

(b) To receive this authorization, the vessel owner or operator must certify in writing with an original or electronic signature to the Coast Guard that the vessel owner or operator has identified and has ensured, by contract or other approved means, the availability of the necessary private response resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel.

(c) Those nontank vessels temporarily authorized to operate under the provisions provided in this section must comply with 33 CFR 155.1070(c), (d), and (e).

**§ 155.5025 One-time port waiver.**

(a) If the vessel owner or operator seeks a one-time port waiver, they must certify in writing or using electronic signatures acceptable to the Coast Guard, prior to the vessel's entry into the Captain of the Port (COTP) zone, that they have met the requirements of—

(1) 33 CFR 155.1025(e)(1) through (3); and

(2) The vessel owner or operator has identified and ensured the availability of, through contract or other approved means, the private response resources necessary to respond, to the maximum extent practicable under the criteria in § 155.5050 to a worst case discharge or substantial threat of discharge from the vessel in the applicable COTP zone.

(b) Once the vessel owner or operator satisfies the requirements of paragraph (a) of this section, the cognizant U.S. Coast Guard COTP may grant written authorization for that nontank vessel to make one voyage in the respective geographic-specific area not covered by the vessel response plan.

(c) All requirements of this subpart must be met by a nontank vessel that received a one-time port waiver, for any subsequent voyage to the same geographic-specific area.

**§ 155.5026 Qualified individual and alternate qualified individual.**

The vessel response plan must identify a qualified individual and at least one alternate who meet the requirements of 33 CFR 155.1026. The qualified individual or alternate qualified individual must be available on a 24-hour basis.

**§ 155.5030 Nontank vessel response plan requirements: General content.**

(a) The entire vessel response plan (VRP) must be written in English and, if applicable, in a language that is understood by the crew members with responsibilities under the VRP.

(b) The VRP must cover all geographic areas of the United States in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas.

(c) The VRP must be divided into the following sections—

(1) General information and introduction;

(2) Notification procedures;

(3) Shipboard spill mitigation procedures;

(4) Shore-based response activities;

(5) List of contacts;

(6) Training procedures;

(7) Exercise procedures;

(8) Plan review and update procedures;

(9) Geographic-specific appendix (GSA) for each Captain of the Port (COTP) zone in which the vessel or vessels operate; and

(10) An appendix for vessel-specific information for the vessel or vessels covered by the VRP.

(d) A vessel owner or operator with multiple vessels may submit one plan for all classes of vessels (i.e., subpart D-Manned vessels carrying oil as primary cargo and unmanned vessels carrying oil as primary cargo; subpart E– Tankers loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act; subpart F—Vessels carrying animal fats and vegetable oils as primary cargo; and subpart G—Vessels carrying other non-petroleum oils as a primary cargo) with a separate vessel-specific appendix for each vessel covered by the plan and a separate GSA for each COTP zone in which the vessel(s) will operate.

(e) A VRP must be divided into the sections described in paragraph (c) of this section unless the VRP is supplemented with a cross-reference table to identify the location of the information required by this subpart.

(f) The information contained in a VRP must be consistent with—

(1) The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) in effect on the date 6 months prior to the submission date of the VRP; or

(2) Most recent NCP and ACP(s).

Note to § 155.5030(f)(1): See diagram of ''Relationship of Plans'' at 40 CFR 300.210.

(g) Copies of the submitted and approved VRP must be available as follows—

(1) The vessel owner or operator must ensure that they maintain one English language copy of the VRP, at a minimum the contents listed in paragraph (c)(1), (2), (3), (5), (6), (7), (9) and (10) of this section and a copy of the Coast Guard approval letter, onboard the vessel. In lieu of paper format, the vessel owner or operator may keep an electronic copy of the VRP and approval letter onboard the vessel. If applicable, additional copies of the required VRP sections must be in the language understood by crew members with responsibilities under the VRP and maintained onboard the vessel; and

(2) The vessel owner or operator must also maintain a current copy of the entire VRP and ensure that each person identified as a qualified individual and alternate qualified individual in the VRP has a current copy of the entire VRP. An electronic copy of the VRP is authorized.

(h) Compliance with this subpart will also constitute compliance for a U.S.-flag nontank vessel required to submit a Shipboard Oil Pollution Emergency Plan (SOPEP) pursuant to 33 CFR 151.09(c) and Regulation 37 of MARPOL 73/78 Annex I as long as the additional requirements listed in § 155.5035(k) are met. A U.S.-flag nontank vessel holding a valid Certificate of Inspection endorsed for Coastwise or Oceans operating routes with authorization to engage on an international voyage must maintain a U.S. Coast Guard SOPEP approval letter per 33 CFR 151.27(e). A separate SOPEP is not required.

**§ 155.5035 Nontank vessel response plan requirements: Specific content.**

(a) *General information and introduction section.* This section of the vessel response plan (VRP) must include—

(1) The vessel's name, country of registry, call sign, official number, and International Maritime Organization (IMO) international number (if applicable). If the VRP covers multiple vessels, this information should be provided for each vessel;

(2) The name, mailing address, email address, telephone number, and facsimile number, and procedures for contacting the vessel's owner or operator on a 24-hour basis;

(3) A list of the Captain of the Port (COTP) zones, ports, and offshore transit areas in which the vessel intends to operate;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the VRP to locate the specific sections of the VRP; and

(5) A record of change(s) page to record information on VRP reviews, updates, or revisions.

(b) *Notification procedures section.* This section of the VRP must include the following information—

(1) A checklist with all notifications, including telephone or other contact numbers, in order of priority to be made by shipboard or shore-based personnel and the information needed for those notifications. Notifications should include those required by—

(i) International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78 (as set forth in 33 CFR 151.26 and 33 CFR part 153); and

(ii) Any applicable State;

(2) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If the notifications vary due to vessel location, the persons to be notified also should be identified in a geographic-specific appendix (GSA). This section should separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel; and

(ii) The individual(s) or organization(s) to be notified by shore-based personnel;

(3) The procedures for notifying the qualified individual(s) designated by the vessel's owner or operator;

(4) Descriptions of the primary and, if available, secondary communications methods by which the notifications would be made. These should be consistent with those in paragraph (b)(1) of this section;

(5) The information that is to be provided in the initial and any follow-up notifications under paragraph (b)(1) of this section;

(i) The initial notification may be submitted in accordance with IMO Resolution A.851(20), ''General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances and/or Marine Pollutants'' (incorporated by reference, see § 155.140). However, the VRP must specify that the notification includes at least the following information—

(A) Vessel name, country of registry, call sign, and official number (if any);

(B) Date and time of the incident;

(C) Location of the incident;

(D) Course, speed, and intended track of vessel;

(E) Radio station(s) and frequencies guarded;

(F) Date and time of next report;

(G) Type and quantity of oil onboard;

(H) Nature and detail of defects, deficiencies, and damage (e.g., overfill of tanks, grounding, collision, hull failure, etc.);

(I) Details of pollution, including estimate of amount of oil discharged or threat of discharge;

(J) Weather and sea conditions on scene;

(K) Ship size and type;

(L) Actions taken or planned by persons on scene;

(M) Current conditions of the vessel;

(N) Number of crew and details of injuries, if any; and

(O) Details of Protection and Indemnity (P&I) Club and Local Correspondent, as applicable.

(ii) The VRP must state that after transmission of the initial notification, as much information as possible that is essential for the protection of the marine environment will be reported to the appropriate on-scene coordinator in follow-up reports. This information must include—

(A) Additional details on the type of oil onboard;

(B) Additional details on the condition of the vessel and the ability to offload cargo and transfer ballast and fuel;

(C) Additional details on the quantity, extent, and movement of the pollution and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship; and

(6) Identification of the person(s) to be notified of a vessel casualty potentially affecting the seaworthiness of a vessel and the information to be provided by the vessel's crew to shore-based personnel to facilitate the assessment of damage stability and stress.

(c) *Shipboard spill mitigation procedures section.* This section of the VRP must include—

(1) Procedures for the crew to mitigate or prevent any discharge or a substantial threat of a discharge of oil resulting from shipboard operational activities associated with internal or external oil transfers. Responsibilities of vessel personnel should be identified by job title and licensed/unlicensed position, if applicable. These procedures should address personnel actions in reference to—

(i) Internal transfer system leaks;

(ii) Fuel tank overflows;

(iii) Suspected tank or hull leaks;

(iv) Assessment and monitoring activities;

(v) Personnel protection issues;

(vi) Protective equipment;

(vii) Threats to health and safety;

(viii) Containment and other response techniques;

(ix) Isolation procedures;

(x) Decontamination of personnel; and

(xi) Disposal of removed oil and clean-up materials;

(2) Procedures in the order of priority for the crew to mitigate or prevent any discharge or a substantial threat of a discharge in the event of a casualty or emergency as listed in paragraphs (c)(2)(i) through (x) of this section. These procedures should be listed separately and reference specific vessel checklists required by the International Ship Management (ISM) Code, Section 8 (Resolution A.741(18), as amended by Resolution MSC.104(73)) (incorporated by reference, see § 155.140), or other means that will ensure consideration of all appropriate factors when addressing a specific casualty. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities in the following scenarios—

(i) Grounding or stranding;

(ii) Explosion or fire, or both;

(iii) Collision or allision;

(iv) Hull failure;

(v) Excessive list;

(vi) Containment system failure;

(vii) Submerged and foundered;

(viii) Wrecked and stranded;

(ix) Hazardous vapor release; and

(x) Equipment failure (e.g., main propulsion, steering gear, etc.);

(3) Procedures for the crew to deploy discharge removal equipment if the vessel is equipped with such equipment;

(4) The procedures for internal transfers of fuel in an emergency;

(5) The procedures for ship-to-ship transfers of fuel in an emergency—

(i) The format and content of the ship-to-ship transfer procedures should be consistent with the ''Ship to Ship Transfer Guide (Petroleum),'' published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF) (incorporated by reference, see § 155.140);

(ii) The procedures should identify the specific response resources necessary to carry out the internal or external transfers, including—

(A) Fendering equipment (ship-to-ship only);

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment;

(D) Lightering or fuel removal and mooring masters (ship-to-ship only); and

(E) Vessel and barge brokers (ship-to-ship only);

(iii) Reference may be made to a separate fuel oil transfer procedure and lightering plan carried onboard the vessel, if safety considerations are summarized in the plan; and

(iv) The location of all equipment and fittings, if any, carried onboard the vessel to perform the transfers should be identified;

(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment, if any, carried onboard the vessel;

(7) The location, crew responsibilities, and procedures for use of shipboard equipment that might be carried to mitigate an oil discharge;

(8) The crew's responsibility, if any, for recordkeeping and sampling of spilled oil. Any requirements for sampling must address safety procedures to be followed by the crew;

(9) The crew's responsibilities, if any, to initiate a response and supervise shore-based response resources;

(10) Damage stability and hull stress considerations when performing shipboard mitigation measures. This section of the VRP should identify and describe—

(i) Activities in which the crew is trained and qualified to execute absent shore-based support or advice; and

(ii) The information to be collected by the vessel's crew to facilitate shore-based assistance;

(11) Location of vessel plans necessary to perform salvage, stability, and hull stress assessments—

(i) The vessel owner or operator should ensure that a copy of these plans is maintained ashore by either the vessel owner or operator or the vessel's recognized classification society, unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel's baseline strength and stability characteristics pre-entered. The VRP should indicate the shore location and 24-hour access procedures of the calculation program for the following plans, where available—

(A) General arrangement plan;

(B) Midship section plan;

(C) Lines plan or table of offsets;

(D) Tank tables;

(E) Load line assignment; and

(F) Light ship characteristics; and

(ii) The VRP should identify the shore location and 24-hour access procedures for the computerized, shore-based damage stability and residual structural strength calculation programs, if available; and

(12) Procedures for implementing personnel safety mitigation strategies for all personnel involved. These procedures may contain more, but must address the following—

(i) Assessment and monitoring activities;

(ii) Personnel protection issues;

(iii) Protective equipment;

(iv) Threats to health and safety;

(v) Containment and other response techniques;

(vi) Isolation procedures;

(vii) Decontamination of personnel; and

(viii) Disposal of removed oil and clean-up materials.

(d) *Shore-based response activities section.* This section of the VRP should include the following information—

(1) The qualified individual's (QI) responsibilities and authority, including immediate communication with the Federal On-Scene Coordinator (FOSC) and notification of the oil spill removal organization(s) identified in the VRP;

(2) If applicable, procedures for transferring responsibility for direction of response activities from vessel personnel to the shore-based spill management team;

(3) The procedures for coordinating the actions of the vessel owner or operator or qualified individual with the predesignated FOSC responsible for overseeing or directing those actions;

(4) The organizational structure that would be used to manage the response actions. This structure should include the following functional areas and information for key components within each functional area—

(i) Command and control;

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies;

(v) Spill response operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance; and

(5) The responsibilities and duties of, and functional job descriptions for each oil spill management team position within the organizational structure identified in paragraph (d)(4) of this section.

(e) *List of contacts section.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the VRP or, if more appropriate, in a GSA, and referenced in this section of the VRP—

(1) Vessel owner or operator;

(2) Qualified individual and alternate qualified individual for the vessel's area of operation;

(3) Applicable insurance provider, representative, or surveyor for the vessel's area of operation;

(4) The vessel's local agent(s) for the vessel's area of operation, or a reference

to the 24-hour point of contact as listed on the vessel's notice of arrival;

(5) Person(s) within the oil spill removal organization to notify for activation of that oil spill removal organization for the three spill scenarios identified in paragraph (i)(1)(v) of this section for the vessel's area of operation;

(6) Person(s) within the identified response organization to notify for activating the organizations to provide—

(i) The required emergency lightering and fuel offloading required by §§ 155.5050(i) and 155.5052 as applicable;

(ii) The required salvage and marine firefighting required by §§ 155.5050(i) and 155.5052 as applicable;

(iii) The required dispersant response equipment required by § 155.5050(j), as applicable; and

(iv) The required aerial oil spill tracking and observation resources required by § 155.5050(k), as applicable; and

(7) Person(s) to notify for activation of the spill management team for the spill response scenarios identified in paragraph (i)(5) of this section for the vessel's area of operation.

(f) *Training procedures section.* This section of the VRP must address the training procedures and programs of the vessel owner or operator to meet the requirements in § 155.5055.

(g) *Exercise procedures section.* This section of the VRP must address the exercise program to be carried out by the vessel owner or operator to meet the requirements in § 155.5060.

(h) *Plan review, update, revision, amendment, and appeal procedure section.* This section of the VRP must address the procedures the vessel owner or operator must follow—

(1) To meet the requirements of §§ 155.5070 and 155.5075; and

(2) For any post-discharge review of the VRP to evaluate and validate its effectiveness.

(i) *GSAs for each COTP zone in which a vessel operates section.* A GSA must be included for each COTP zone identified.

(1) The appendices must include the following information or identify the location of such information within the VRP—

(i) A list of the geographic areas (port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, and open ocean areas) in which the vessel intends to handle, store, or transport oil as fuel or cargo within the applicable COTP zone;

(ii) The volume and group of oil on which the required level of response resources are calculated;

(iii) Required Federal or State notifications applicable to the geographic areas in which a vessel operates;

(iv) Identification of the QI; and

(v) Identification of the oil spill removal organization(s) (OSRO) that are identified and ensured available, through contract or other approved means, and the spill management team to respond to the following spill scenarios, as applicable—

(A) Average most probable discharge;

(B) Maximum most probable discharge; and

(C) Worst case discharge.

(2) Nontank vessels with a capacity less than 250 barrels must plan for and identify maximum most probable discharge response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(3) The organization(s) identified to meet the requirements of paragraph (i)(1)(v) of this section must be capable of providing the equipment and supplies necessary to meet the requirements of §§ 155.5050 and 155.5052, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the OSRO(s) and spill management team identified for the first 7 days of the response.

(4) The GSA must list the response resources and related information required under §§ 155.5050, 155.5052, and appendix B of this part, as appropriate.

(5) If the Coast Guard has evaluated an OSRO and has determined the OSROs capability is equal to or exceeds the response capability needed by the vessel, the GSA may identify only the OSRO and their applicable classification and not the information required in paragraph (i)(4) of this section. This information is subject to Coast Guard verification at any time during the validity of the VRP.

(6) The GSA must also separately list the companies identified to provide the salvage, emergency lightering, and marine firefighting resources required in this subpart. The GSA must list the response resources and related information required in paragraph (i)(4) of this section. This information is subject to Coast Guard verification at any time during the validity of the VRP.

(i) Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need only plan for and identify salvage, emergency lightering, and marine firefighting response resources, as required by subpart I, in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(ii) Nontank vessels with a capacity less than 250 barrels need only plan for and identify salvage response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(7) For nontank vessels with a capacity of 2,500 barrels or greater that carry group II through group IV petroleum oils as fuel or cargo and that operate in waters where dispersant use pre-authorization agreements exist, the GSA must also separately list the resource providers and specific resources, including appropriately trained dispersant-application personnel, necessary to provide, if appropriate, the dispersant capabilities required in this subpart. All resource providers and resources must be available by contract or other approved means. The dispersant resources to be listed within this section must include the following—

(i) Identification of each primary dispersant staging site to be used by each dispersant-application platform to meet the requirements of § 155.5050(j) of this chapter; and

(ii) Identification of the platform type, resource provider, location, and dispersant payload for each dispersant-application platform identified. Location data must identify the distance between the platform's home base and the identified primary dispersant-staging site(s) for this section.

(8) For each unit of dispersant stockpile required to support the effective daily application capacity of each dispersant-application platform necessary to sustain each intended response tier of operation, identify the dispersant product resource provider, location, and volume. Location data must include the distance from the stockpile to the primary staging sites where the stockpile would be loaded on

to the corresponding platforms. If the Coast Guard has evaluated an OSRO and has determined its capability meets the response capability needed by the vessel owner or operator, the section may identify the OSRO only, and not the information required in paragraphs (i)(7)(i), (i)(7)(ii), and (i)(8) of this section.

(9) Nontank vessels with an oil capacity of 250 barrels or greater, but less than 2,500 barrels, that carry group II through group IV petroleum oils as fuel or cargo and that operate in waters where dispersant use pre-authorization agreements exist, need only plan for and identify dispersant response resources but not ensure their availability by contract. Submission of a written consent from the dispersant response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(10) For nontank vessels with a fuel and cargo capacity of 2,500 barrels or greater not operating exclusively on the inland areas of the United States, the GSA must also separately list the resource providers and specific resources necessary to provide oil spill tracking capabilities required in this subpart. The oil spill tracking resources to be listed within this section must include the following—

(i) The identification of a resource provider; and

(ii) The type and location of aerial surveillance aircraft that have been ensured available, through contract or other approved means, to meet the oil spill tracking requirements of § 155.1050(k) of this part.

(11) Nontank vessels with a capacity of 250 barrels or greater, but less than 2,500 barrels, need only plan for and identify aerial oil spill tracking response resources in the VRP, but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, ''Contract or other approved means'', paragraph (5).

(j) *Appendices for vessel-specific information section.* This section of the VRP must include for each vessel covered by the VRP the following information, as applicable—

(1) List of the vessel's principal characteristics;

(2) Capacities of all cargo, fuel, lube oil, ballast, and fresh water tanks;

(3) The total volume and groups of oil that would be involved in a—

(i) Maximum most probable discharge; and

(ii) Worst case discharge;

(4) Diagrams showing location of all cargo, fuel, lube oil, and slop tanks, as applicable;

(5) General arrangement plan (can be maintained separately onboard the vessel providing the VRP identifies the specific location);

(6) Midships section plan (can be maintained separately onboard the vessel providing the VRP identifies the specific location);

(7) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately onboard the vessel providing the VRP identifies the specific location);

(8) Damage stability data (can be maintained separately, providing the VRP identifies the specific location);

(9) Location of cargo and fuel stowage plan for vessel; and

(10) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the fuel and cargo oil onboard the vessel. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent, will meet this requirement. This information can be maintained separately.

(k) *Required appendices for MARPOL 73/78 Annex I, Regulation 37, Shipboard Oil Pollution Emergency Plan (SOPEP) information.* U.S.-flag vessels not certificated for coastwise or oceans operating routes and foreign-flag vessels that are in compliance with Regulation 37 of MARPOL 73/78 Annex I are not required to comply with this paragraph. A vessel owner or operator of a U.S.-flag vessel constructed or certificated for coastwise or oceans operating routes, but that does not engage in international voyages, may request to be exempted from compliance with this paragraph through submission of a certified statement, attesting same, to Commandant (CG–CVC), Office of Commercial Vessel Compliance, which must accompany the new nontank vessel response submission or resubmission. U.S.-flag vessels that must comply with this paragraph must label the cover of their VRP as a MARPOL 73/78 Annex I, Regulation 37 Shipboard Oil Pollution Emergency Plan (SOPEP) and Coast Guard Nontank Vessel Response Plan. The following information must be submitted consistent with Regulation 37 of MARPOL 73/78 Annex I as set forth in 33 CFR 151.26—

(1) The introductory text required by 33 CFR 151.26(b)(1);

(2) The preamble statement regarding the purpose of the plans and how the plan relates to other shore-related plans as required by 33 CFR 151.26(b)(2);

(3) The information on authorities or persons to be contacted in the event of an oil pollution incident as required 33 CFR 151.26(b)(3)(iii). This information must also clearly specify who will be responsible for informing the necessary parties from the coastal State contacts, the port contacts, and the ship interest contacts. This information must include—

(i) An appendix containing coastal State contacts for those coastal States in which the vessel regularly transits the exclusive economic zone. The appendix should list those agencies or officials of administrations responsible for receiving and processing pollution incident reports;

(ii) An appendix of port contacts for those ports at which the vessel regularly calls; and

(iii) For Antarctica, reports must also be directed to any Antarctic station that may be affected in accordance with 33 CFR 151.26(b)(3)(iii)(C);

(4) Include the procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in combating an oil spill incident in accordance with 33 CFR 151.26(b)(5). The plan should address the need to contact the coastal State to advise them of action(s) being implemented and determine what authorization(s), if any, are needed; and

(5) Required information lists in separate appendices per 33 CFR 151.26(b)(6)(ii).

**§ 155.5050 Response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil.**

(a) *Criteria for evaluating operability of response resources.* The criteria used to evaluate the operability of response resources identified in a vessel response plan (VRP) for specified operating environments must be in accordance with 33 CFR 155.1050(a).

(b) *Operating environment reclassification of specific bodies of water.* Captain of the Port (COTP) reclassification of a specific body of water or location within the COTP zone must be in accordance with 33 CFR 155.1050(b).

(c) *Criteria for response equipment.* Response equipment must—

(1) Meet or exceed the criteria listed in Table 1 of appendix B of this part;

(2) Be capable of functioning in the applicable operating environment; and

(3) Be appropriate for the amount of oil capable of being carried.

(d) *Average most probable discharge.* (1) The owner or operator of a nontank vessel that carries groups I through IV petroleum oil as cargo must identify in the VRP and ensure the availability of, through contract or other approved means, the response resources that will respond to a discharge up to the vessel's average most probable discharge (AMPD). Nontank vessels that carry oil as cargo must meet the requirements for AMPD coverage, as applicable, per 33 CFR 155.1050(d).

(2) Nontank vessels that only carry groups I through IV petroleum oil as fuel do not have to ensure the availability of AMPD resources by contract or other approved means, but must plan for and identify response resources required in § 155.1050(d)(1) and list this information in the applicable geographic-specific appendix for bunkering or fueling operations. Permission or acknowledgement from the listed resource providers is not required.

(e) *Maximum most probable discharge.* (1) The owner or operator of a nontank vessel with a capacity of 250 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo must identify in the VRP and ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to the vessel's maximum most probable discharge (MMPD) volume. For the purposes of meeting the requirements of this paragraph, vessel owners or operators must meet 33 CFR 155.1050(e).

(2) The owner or operator of a nontank vessel with a capacity less than 250 barrels must plan for and identify MMPD response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(f) *Worst case discharge.* The owner or operator of a nontank vessel with a capacity of 2,500 barrels or greater carrying groups I through IV petroleum oil as fuel or cargo must identify in the VRP and ensure the availability of, through contract or other approved means, the response resources necessary to respond to discharges up to the worst case discharge (WCD) volume of the oil to the maximum extent practicable. For the purposes of meeting the requirements of this paragraph, vessel owners or operators must meet 33 CFR 155.1050(f). Nontank vessels need only plan for Tier 1 response resources.

(g) *Tier 1 response times.* Response equipment identified to respond to a WCD should be capable of arriving on scene within the times specified in this paragraph for the applicable response in a higher volume port area, Great Lakes, or in other areas. Table 155.5050(g) details response times for this tier, from the time of discovery of a discharge.

TABLE 155.5050(G)—RESPONSE TIMES FOR TIER 1

| Tier 1 | |
|---|---|
| Higher volume port area | 12 hrs. |
| Great Lakes | 18 hrs. |
| All other operating environments, including rivers and canals, inland, nearshore, offshore, and open ocean areas. | 24 hrs. |

(h) *Planning standards for the mobilization and response times for required MMPD and WCD response resources.* For the purposes of arranging for MMPD or WCD response resources through contract or other approved means, response equipment identified for plan credit should be capable of being mobilized and en route to the scene of a discharge within 2 hours of notification. The notification procedures identified in the VRP should provide for notification and authorization for mobilization of response resources—

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(i) *Salvage, emergency lightering, and marine firefighting requirements.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo must plan for salvage, emergency lightering, and marine firefighting response resources, as applicable.

(1) Nontank vessels with a capacity of 2,500 barrels or greater must meet the salvage, emergency lightering, and marine firefighting requirements found in subpart I of this part.

(2) Nontank vessels with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, need to plan for and identify salvage, emergency lightering, and marine firefighting response resources found in subpart I in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(3) Nontank vessels with a capacity less than 250 barrels need to plan for and identify salvage response resources found in subpart I in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(j) *Dispersants.* (1) The owner or operator of a nontank vessel carrying groups II through IV petroleum oil as fuel or cargo with a capacity of 2,500 barrels or greater that operates in any area pre-authorized for dispersant use must identify in their VRP, and ensure the availability of, through contract or other approved means, response resources capable of conducting dispersant operations within those areas. Vessel owners or operators must meet 33 CFR 155.1050(k). These nontank vessels must meet Tier 1 for dispersant effective daily application capability.

(2) The owner or operator of a nontank vessel with a capacity less than 2,500 barrels, but greater than or equal to 250 barrels, needs to plan for and identify dispersant response resources in the VRP but do not have to ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, paragraph (5) of the definition of ''Contract or other approved means.''

(k) *Aerial oil spill tracking and observation response resources.* (1) The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of—

(i) 2,500 barrels or greater must identify in the VRP, and ensure availability of, through contract or other approved means, the response resources necessary to provide aerial oil spill tracking to support oil spill assessment and cleanup activities. Vessel owners or operators of these vessels must meet 33 CFR 155.1050(l).

(ii) Less than 2,500 barrels, but greater than 250 barrels, need to plan for and identify aerial oil tracking response resources in the VRP but do not have to

ensure these resources are available by contract. Submission of a written consent for plan listing from the recognized response resource provider must accompany the VRP for approval or revision. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, ''Contract or other approved means'', paragraph (5).

(2) Nontank vessels operating exclusively on the inland areas of the United States are not required to comply with paragraph (k) of this section.

(l) *Response resources necessary to perform shoreline protection operations.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater must identify in the VRP, and ensure the availability of, through contract or other approved means, the response resources necessary to perform shoreline protection operations. The response resources must include the quantities of boom listed in Table 2 of appendix B of this part, based upon the specific COTP zones in which the vessel operates.

(m) *Shoreline cleanup operations.* The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo with a capacity of 250 barrels or greater must identify in the VRP, and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations. The shoreline cleanup resources required must be determined as described in appendix B of this part.

(n) *Practical and technical limits of response capabilities.* Appendix B of this part sets out response capability capacities (caps) that recognize the practical and technical limits of response capabilities for which an individual vessel owner or operator can contract in advance. Table 6 in appendix B lists the contracting caps that are applicable. The owner or operator of a nontank vessel carrying groups I through IV petroleum oil as fuel or cargo, with a capacity of 2,500 barrels or greater, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, must identify commercial sources of additional equipment equal to twice the cap listed for each tier or the amount necessary to reach the calculated planning volume, whichever is lower, to the extent that this equipment is available. The equipment so identified must be capable of arriving on scene no later than the applicable tier response times contained in § 155.5050(g) or as quickly as the nearest available resource permits. A VRP must identify the specific sources, locations, and quantities of this additional equipment. No contract is required.

(o) *Review of response capability limits.* The Coast Guard will continue to evaluate the environmental benefits, cost efficiency, and practicality of increasing mechanical recovery capability requirements. This continuing evaluation is part of the Coast Guard's long term commitment to achieving and maintaining an optimum mix of oil spill response capability across the full spectrum of response modes. As best available technology demonstrates a need to evaluate or change mechanical recovery capacities, a review of cap increases and other requirements contained within this subpart may be performed. Any changes in the requirements of this section will occur through a rulemaking process. During this review, the Coast Guard will determine if established caps remain practicable and if increased caps will provide any benefit to oil spill recovery operations. The review will include, at least, an evaluation of—

(1) Best available technologies for containment and recovery;

(2) Oil spill tracking technology;

(3) High rate response techniques;

(4) Other applicable response technologies; and

(5) Increases in the availability of private response resources.

(p) *Nontank vessel response plan required response resources matrix.* Table 155.5050(p) summarizes the VRP required response resources.

TABLE 155.5050(P)—NONTANK VESSEL RESPONSE PLAN REQUIRED RESPONSE RESOURCES MATRIX

| Nontank vessel's fuel and cargo oil capacity | AMPD | MMPD | WCD | Salvage | Emergency lightering | Fire fighting | Dispersant [3] | Aerial tracking [4] | Shoreline protection | Shore line cleanup |
|---|---|---|---|---|---|---|---|---|---|---|
| 2,500 barrels or greater | NO [1] | YES | YES | YES | YES | YES | YES | YES | YES | YES. |
| Less than 2,500 barrels, but greater than or equal to 250 barrels. | NO [1] | YES | NO | YES [2] | YES [2] | YES [2] | YES [2] | YES [2] | YES | YES. |
| Less than 250 barrels | NO [1] | YES [2] | NO | YES [2] | NO | NO | NO | NO | NO | NO. |

[1]—For nontank vessels carrying oil as fuel only. Nontank vessels carrying oil as cargo must meet AMPD response resources in 33 CFR 155.5050(d)(1) as applicable.

[2]—The indicated response resources that must be located within the stipulated response times in the specified geographic areas need only be identified and planned for in the VRP, but not ensured available by contract. Submission of a written consent from the response resource provider must accompany the VRP for approval. This is considered an acceptable ''other approved means.'' See 33 CFR 155.5020, ''Contract or other approved means'', paragraph (5).

[3]—Dispersant response resources are only required for waters where dispersant pre-authorization has been authorized IAW the Area Contingency Plan. See 33 CFR 155.5050(j).

[4]—Aerial oil spill tracking response resources are not required for inland areas.

**§ 155.5052 Response plan development and evaluation criteria for nontank vessels carrying group V petroleum oil.**

Owners or operators of nontank vessels that carry group V petroleum oil as fuel or cargo must meet the requirements of 33 CFR 155.1052.

**§ 155.5055 Training.**

(a) For nontank vessels with an oil capacity of 250 barrels or greater—

(1) A vessel response plan (VRP) submitted to meet the requirements of § 155.5035 must identify the training to be provided to persons having responsibilities under the VRP, including members of the vessel crew, the qualified individual, and the spill management team. The training program must differentiate between that training provided to vessel personnel and that training provided to shore-based personnel. Appendix C of this part provides additional guidance regarding training; and

(2) A vessel owner or operator must comply with the vessel response plan training requirements of 33 CFR 155.1055.

(b) For nontank vessels with an oil capacity of less than 250 barrels, a vessel owner or operator must comply with the VRP training requirements of paragraph (a) of this section or the Alternative Training and Exercise Program requirements of § 155.5061.

**§ 155.5060 Exercises.**

(a) For nontank vessels with an oil capacity of 250 barrels or greater—

(1) A vessel owner or operator required by § 155.5035 to have a vessel response plan (VRP) must conduct exercises as necessary to ensure that the VRP will function in an emergency. Vessel owners or operators must include both announced and unannounced exercises; and

(2) A vessel owner or operator must comply with the VRP exercise requirements of 33 CFR 155.1060.

(b) For nontank vessels with an oil capacity of less than 250 barrels, a vessel owner or operator must comply with the VRP exercise requirements of paragraph (a) of this section or the Alternative Training and Exercise Program requirements of § 155.5061.

**§ 155.5061 Alternative Training and Exercise Program.**

(a) Owners or operators of nontank vessels with an oil capacity of less than 250 barrels, in lieu of the training and exercise requirements of §§ 155.5055 and 155.5060, may meet an Alternative Training and Exercise Program that has been approved by the Commandant (CG–CVC) for meeting the requirements of this section.

(b) Vessel owners or operators must make available to the Coast Guard, upon request, any information related to implementation of an approved Alternative Training and Exercise Program.

(c) For approval of an Alternative Training and Exercise Program the vessel owners or operators must submit to the Commandant (CG–CVC) for review and approval: The Alternative Training and Exercise Program and the following information to assess the adequacy of the proposed Alternative Training and Exercise Program—

(1) A list of the vessels to which the Alternative Training and Exercise Program is intended to apply;

(2) An explanation of how the Alternative Training and Exercise Program addresses the requirements of 33 CFR 155.1055(b) through (f) and 33 CFR 155.1060; and

(3) An explanation of how vessel owners or operators must implement the Alternative Training and Exercise Program in its entirety, including performing verification of implementation.

(d) Amendments to the Alternative Training and Exercise Program approved under this section may be initiated by the submitter of an Alternative Training and Exercise Program.

(e) Approval of the Alternative Training and Exercise Program is required before a vessel may receive a nontank vessel response plan approval letter.

(f) The Commandant (CG–CVC) will examine each submission for compliance with this section and—

(1) If the submission meets all the requirements, the Coast Guard will consider the training and exercise program requirements under this section to be satisfactory; or

(2) If the Coast Guard determines that the submission does not meet all of the requirements, the submitter will be notified of the deficiencies. The submitter may then resubmit a revised request within the time period specified.

**§ 155.5062 Inspection and maintenance of response resources.**

The owner or operator of a nontank vessel required to submit a vessel response plan under this part must comply with the response resource inspection and maintenance requirements of 33 CFR 155.1062.

**§ 155.5065 Procedures for plan submission and approval.**

(a) An owner or operator of a nontank vessel, to which this subpart applies, must submit one complete English language copy of a vessel response plan (VRP) to Commandant (CG–CVC), Office of Commercial Vessel Compliance, U.S. Coast Guard, 2100 2nd St. SW. Stop 7581, Washington, DC 20593–7581, Attn: Vessel Response Plan Review Team. The VRP must be submitted at least 60 days before the vessel intends to operate upon the navigable waters of the United States.

(b) The owner or operator of a nontank vessel must include a statement certifying that the VRP meets the applicable requirements of this subpart and the requirements of subparts D, E, F, and G, if applicable. The vessel owner or operator must also include a statement certifying that the vessel owner or operator has ensured the availability of, through contract or other approved means, the necessary private response resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel as required under this subpart. VRPs should be submitted electronically by using the Vessel Response Plan Electronic Submission Tool available at *https://homeport.uscg.mil/vrpexpress.* If vessel owners or operators submit VRPs in paper format, CG Form ''Application for Approval/Revision of Vessel Pollution Response Plans'' (CG–6083) located at: *http://www.uscg.mil/forms/CG/CG_6083.pdf* meets the requirement for a VRP certification statement as required by this paragraph.

(c) If the Coast Guard determines that the VRP meets all requirements of this subpart, the Coast Guard will notify the vessel owner or operator with an approval letter. The VRP will be valid for a period of 5 years from the date of approval, conditional upon satisfactory annual updates.

(d) If the Coast Guard reviews the VRP and determines that it does not meet all of the requirements of this subpart, the Coast Guard will notify the vessel owner or operator of the VRP deficiencies. The vessel owner or operator must then resubmit a copy of the revised VRP or corrected portions of the VRP, within the time period specified in the written notice provided by the Coast Guard.

**§ 155.5067 Alternative planning criteria.**

(a) When the owner or operator of a nontank vessel believes that national planning criteria contained elsewhere in this part are inappropriate for the areas in which the vessel intends to operate, the vessel owner or operator may submit an alternative planning criteria request to the Coast Guard. Alternative planning criteria requests must be submitted 90 days before the vessel intends to operate under the proposed alternative, or as soon as is practicable. The alternative planning criteria request must be endorsed by the Captain of the Port (COTP) with jurisdiction over the geographic area(s) affected before being considered by Commandant (CG–CVC), Office of Commercial Vessel Compliance, for the review and approval of the respective vessel response plan (VRP). In any case, the request must be received by Commandant (CG–CVC) with an endorsement by the respective COTP no later than 21 days before the vessel intends to operate under the alternative planning criteria.

(b) The alternative planning criteria request should detail all elements of the VRP where deviations from the requirements in this subpart are being proposed or have not been met. Response equipment, techniques, or procedures identified in the alternative planning criteria request should be submitted in accordance with the evaluation criteria of appendix B of this part. The request should contain at a minimum—

(1) Reason(s) and supporting information for the alternative planning criteria request;

(2) Identification of regulations necessitating the alternative planning criteria request;

(3) Proposals for alternative procedures, methods, or equipment standards, where applicable, to provide for an equivalent level of planning, response, or pollution mitigation strategies;

(4) Prevention and mitigation strategies that ensure low risk of spills and adequate response measures as a result of the alternative planning criteria; and

(5) Environmental and economic impact assessments of the effects.

(c) The determination of an alternative planning criteria request will

be conducted by Commandant (CG–CVC), Office of Commercial Vessel Compliance.

**§ 155.5070 Procedures for plan review, revision, and amendment.**

(a) The owner or operator of a nontank vessel must review the vessel response plan (VRP) annually. This review must occur within 1 month of the anniversary date of Coast Guard approval of the VRP.

(b) A VRP prepared and submitted under this subpart must be revised and amended, as necessary, in accordance with § 155.1070.

**§ 155.5075 Appeal procedures.**

(a) A vessel owner or operator who disagrees with a deficiency determination may submit a petition for reconsideration to the Commandant (CG–5PC), Director of Inspections and Compliance, U.S. Coast Guard, 2100 2nd St. SW Stop 7581, Washington, DC 20593–7581 or *vrp@uscg.mil* within the time period required for compliance or within 7 days from the date of receipt of the Coast Guard notice of a deficiency determination, whichever is less. After considering all relevant material presented, the Coast Guard will notify the vessel owner or operator of the final decision.

(1) Unless the vessel owner or operator petitions for reconsideration of the Coast Guard's decision, the vessel's owner or operator must correct the vessel response plan (VRP) deficiencies within the period specified in the Coast Guard's initial determination.

(2) If the vessel owner or operator petitions the Coast Guard for reconsideration, the effective date of the Coast Guard notice of deficiency determination may be delayed pending a decision by the Coast Guard. Petitions to the Coast Guard must be submitted in writing, via the Coast Guard official who issued the requirement to amend the VRP, within 5 days of receipt of the notice.

(b) Within 21 days of notification that a VRP is not approved, the vessel owner or operator may appeal that determination to the Director of Inspections and Compliance. This appeal must be submitted in writing to Commandant (CG–5PC), Director of Inspections and Compliance, U.S. Coast Guard, 2100 2nd St. SW. Stop 7581, Washington, DC 20593–7581.

■ 24. In appendix B to part 155, revise paragraphs 1.1, 2.6, 2.7, 3.1, 4.2.2, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 7.1, 7.2, 7.2.3, 7.2.4, 7.3.1, and 8.1.1 to read as follows:

**Appendix B to Part 155—Determining and Evaluating Required Response Resources for Vessel Response Plans**

* * * * *

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subparts D, E, F, G, and J of this part. These guidelines will be used by the vessel owner or operator in preparing the response plan and by the Coast Guard to review vessel response plans. Response plans submitted under subparts F and G of this part will be evaluated under the guidelines in section 2 and Table 1 of this appendix.

* * * * *

2.6 The requirements of subparts D, E, F, G, and J of this part establish response resource mobilization and response times. The location where the vessel operates farthest from the storage location of the response resources must be used to determine whether the resources are capable of arriving on scene within the time required. A vessel owner or operator must include the time for notification, mobilization, and travel time of resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge requirements. For subparts D and E of this part, Tier 2 and 3 resources must be notified and mobilized as necessary to meet the requirements for arrival on scene. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed, unless the vessel owner or operator can demonstrate otherwise.

2.7 For subparts D, E, and J of this part, in identifying equipment, the vessel owner or operator must list the storage location, quantity, and manufacturer's make and model, unless the oil spill removal organization(s) providing the necessary response resources have been evaluated by the Coast Guard, and their capability has been determined to equal or exceed the response capability needed by the vessel. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft plus freeboard) must be included. A vessel owner or operator must ensure that identified boom has compatible connectors.

* * * * *

3.1 A vessel owner or operator must identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the 50-barrel average most probable discharge at the point of an oil transfer involving a vessel that carries oil as a primary cargo or a nontank vessel carrying oil as cargo. The equipment must be designed to function in the operating environment at the point of oil transfer. These resources must include—

* * * * *

4.2.2 Ten percent of the total oil capacity.

* * * * *

5.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill recovery devices identified to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the time specified for the applicable response tier listed in §§ 155.1050(g) and 155.5050(g).

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify the storage locations of all equipment that must be used to fulfill the requirements for each tier.

5.4 A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be downgraded to the limits of the available storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the vessel owner or operator, as applicable under the regulations prescribed in this part, must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

(i) Open ocean—none.

(ii) Offshore—10 percent.

(iii) Nearshore, inland, Great Lakes, and rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices and temporary storage capacity, a vessel owner or operator, as applicable under the regulations prescribed in this part, must identify in the response plan and ensure the availability of, through contract or other approved means, sufficient boom that can arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. Table 2 of this appendix lists the minimum quantities of additional boom required for shoreline protection that a vessel owner or operator must identify in the response plan and ensure the availability of, through contract or other approved means.

5.7 A vessel owner or operator, as applicable under the regulations prescribed in this part, must also identify in the response plan and ensure, by contract or other approved means, the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of emulsified oil that might impact the affected shoreline. The volume of oil for which a vessel owner or operator should plan for should be calculated through the application of factors contained in Tables 3 and 4 of this appendix. The volume calculated from these

tables is intended to assist the vessel owner or operator in identifying a contractor with sufficient resources. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

* * * * *

7.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must plan for a response to a vessel's worst case discharge oil planning volume. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporation and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a vessel owner or operator, as applicable under the regulations prescribed in this part, for determining required on-water recovery capacity:

* * * * *

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 5 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on scene within the applicable time for each response tier. Table 5 specifies three tiers. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 12, 36, and 60 hours of the discovery of an oil discharge. For the Great Lakes, these tiers are 18, 42, and 66 hours. For rivers and canals, inland, nearshore, and offshore, these tiers are 24, 48, and 72 hours. For the open ocean area, these tiers are 24, 48, and 72 hours with an additional travel time allowance of 1 hour for every additional 5 nautical miles from shore. For nontank vessels, only Tier 1 is specified.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable geographic area. The equipment must be capable of sustaining operations for the time period specified in Table 3 of this appendix. A vessel owner or operator, as applicable under the regulations prescribed in this part, must identify and ensure the availability of, through contract or other approved means, sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap described in Table 6 of this appendix, then a vessel owner or operator must contract only for the quantity of resources required to meet the cap, but must identify sources of additional resources as indicated in § 155.1050(p). For a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and summed before applying the cap.

* * * * *

7.3.1 The following must be determined: The total volume of oil carried; the appropriate group for the type of petroleum oil carried [persistent (groups II, III, and IV) or non-persistent (group I)]; and the geographic area(s) in which the vessel operates. For a vessel carrying different oil groups, each group must be calculated separately. Using this information, Table 3 of this appendix must be used to determine the percentages of the total oil volume to be used for shoreline cleanup resource planning.

* * * * *

8.1.1 A vessel owner or operator, as applicable under the regulations prescribed in this part, must plan either for a dispersant capacity to respond to a vessel's worst case discharge of oil, or for the amount of the dispersant resource capability as required by § 155.1050(k)(3) of this subchapter, whichever is the lesser amount. When planning for the cumulative application capacity that is required, the calculations should account for the loss of some oil to the environment due to natural dissipation causes (primarily evaporation). The following procedure should be used to determine the cumulative application requirements:

* * * * *

■ 25. In appendix C to part 155, revise paragraphs 2.2.3.1, 2.2.14, 2.2.15, 2.2.15.1, 2.2.15.2, 2.2.15.3, 2.2.15.4, and 2.2.15.5 to read as follows:

## Appendix C to Part 155—Training Elements for Oil Spill Response Plans

* * * * *

2.2.3.1 Operational activities associated with internal or external fuel and cargo transfers;

* * * * *

2.2.14 Actions to take, in accordance with designated job responsibilities, in the event of a transfer system leak, tank overflow, or suspected fuel or cargo tank or hull leak.

2.2.15 Information on the oil handled by the vessel or facility, including familiarity with—

2.2.15.1 Cargo material safety data sheets (including oil carried as fuel);

2.2.15.2 Chemical characteristics of all oils carried as fuel or cargo;

2.2.15.3 Special handling procedures for all oils carried as fuel or cargo;

2.2.15.4 Health and safety hazards associated with all oils carried as fuel or cargo; and

2.2.15.5 Spill and firefighting procedures for all oils carried as fuel or cargo.

* * * * *

## PART 160—PORTS AND WATERWAYS SAFETY–GENERAL

■ 26. The authority citation for part 160 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

### § 160.206 [Amended]

■ 27. In § 160.206, in Table 160.206—

■ a. In the Required information column, after item (1)(viii), add ''(ix) USCG Vessel Response Plan Control Number, if applicable''; and

■ b. In each of remaining three columns of the newly added row (1)(ix), add an ''X''.

Dated: August 16, 2013.

**Robert J. Papp, Jr.,**

*Admiral, U.S. Coast Guard Commandant.*

[FR Doc. 2013–22059 Filed 9–27–13; 8:45 am]

BILLING CODE 9110–04–P

# FEDERAL REGISTER

Vol. 78 Monday,

No. 189 September 30, 2013


Part IV

## Department of Homeland Security

Coast Guard

46 CFR Parts 1, 2, 5, et al.

49 CFR Parts 7, 450, 451, et al.

Shipping and Transportation; Technical, Organizational, and Conforming Amendments; Final Rule

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Parts 1, 2, 5, 6, 7, 8, 10, 11, 12, 15, 16, 25, 27, 28, 30, 31, 32, 34, 35, 39, 42, 44, 46, 50, 52, 53, 54, 56, 57, 58, 59, 61, 62, 63, 64, 69, 70, 71, 76, 77, 78, 90, 91, 92, 95, 96, 97, 105, 107, 108, 109, 110, 111, 114, 115, 116, 125, 126, 127, 147, 148, 150, 151, 153, 154, 159, 160, 161, 162, 164, 169, 170, 171, 172, 174, 175, 176, 177, 179, 180, 188, 189, 193, 195, 197, 199, and 401**

**49 CFR Parts 7, 450, 451, and 452**

**[Docket No. USCG–2013–0671]**

**RIN 1625–AC08**

# Shipping and Transportation; Technical, Organizational, and Conforming Amendments

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule that makes non-substantive changes throughout titles 46 and 49 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard shipping and transportation regulations. This rule will have no substantive effect on the regulated public. These changes are provided to coincide with the annual recodification of titles 46 and 49 on October 1, 2013.

**DATES:** This final rule is effective September 30, 2013.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2013–0671 and are 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. You may also find this docket online by going to *http://www.regulations.gov* and following the instructions on that Web site.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Paul H. Crissy, Coast Guard; telephone 202–372–1093, email *Paul.H.Crissy@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 Contents for Preamble

I. Abbreviations
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K. Energy Effects
L. Technical Standards
M. Environment

## I. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
IEC International Electrotechnical Commission
NFPA National Fire Protection Association
OMB Office of Management and Budget
PHMSA Pipeline and Hazardous Materials Safety Administration
§ Section symbol
U.S.C. United States Code
VCDOA Vice Commandant Decision on Appeal

## II. Regulatory History

We did not publish a notice of proposed rulemaking for this rule. Under 5 U.S.C. 553(b)(A), the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, the Coast Guard finds notice and comment procedures are unnecessary under 5 U.S.C. 553(b)(B), as this rule consists only of corrections and editorial, organizational, and conforming amendments, and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

## III. Background and Purpose

Each year, the printed editions of Titles 46 and 49 of the Code of Federal Regulations (CFR) are re-codified on October 1. This rule, which becomes effective September 30, 2013, makes technical and editorial corrections throughout Titles 46 and 49. This rule does not create or change any substantive requirements. For a comprehensive list of each change in Titles 46 and 49 in the CFR, see the Table of Changes available in the docket for this rulemaking.

## IV. Discussion of the Rule

This rule amends 46 CFR 1.01–10(b) to update and clarify titles and organizational structure for certain Coast Guard offices. No modifications to the organization or reporting structure are affected by this change. For a list of each title name change, see the Table of Changes in the docket.

This rule amends 46 CFR 2.10–1(a) to clarify the fee requirements for vessels that require a Certificate of Inspection or a Certificate of Compliance. United States vessels require a Certificate of Inspection; foreign vessels require a Certificate of Compliance. Also, references to ''inspection fees'' are being changed to read ''inspection and examination fees'' to be consistent throughout the part. No change to the fees or requirements for inspection under 46 CFR 2.10–1(a) is made by this rule.

This rule amends 46 CFR 2.10–120(b) to clarify when an overseas inspection fee should be paid. The overseas inspection fee must be paid before the inspection is performed, but should not be paid until the Coast Guard agrees to perform the inspection. This change clarifies that sequence.

This rule amends 46 CFR 7.55(b) to replace a geographic reference to the ''Oregon Inlet radiobeacon'' with ''Oregon Inlet Jetty Light.'' The Oregon Inlet radiobeacon was disestablished in 1994 and is no longer charted or listed in any light list. These landmarks in this part are used to define the boundary lines for certain U.S. laws listed in 46 CFR 7.1.

This rule amends the definition of ''fixed fire-extinguishing system'' in 46 CFR 27.101 to remove an old standard that was inadvertently left in place in a 2012 revision. On June 2, 2012, the Coast Guard amended the definition of ''fixed fire-extinguishing system'' in 46 CFR 27.101 (77 FR 33861). Under the old definition, a fixed fire-extinguishing system was required to meet National Fire Protection Association Standard 2001 (NFPA 2001). Under the definition added in 2012, a fixed fire-extinguishing system must comply with the regulations in 46 CFR 95.16 and 46 CFR 162.161, which incorporate NFPA 2001. The old standard should have been removed in 2012. The NPRM and final rule both discuss revising the regulations surrounding clean agent and inert systems and list 46 CFR 27.101 as a section that will be revised.

This rule amends the table to 46 CFR 39.10–5(b), § 39.20–9(b)(8), several subparagraphs in 46 CFR 110.10–1(g),

§ 110.15–1, and numerous other paragraphs in 46 CFR part 111 to correct the references to the International Electrotechnical Commission's (IEC) standards. The standards have not changed, but the IEC numbering system has been modified so that all standards are designated with a 60000-series number. For example, IEC 533 is now called IEC 60533; IEC 92–202 is now called IEC 600092–202.

This rule clarifies requirements related to magazines and storing ammunition in 46 CFR 147.95. The Pipeline and Hazardous Materials Safety Administration (PHMSA) recently amended their regulations at 49 CFR part 179. PHMSA eliminated the use of the word ''magazine'' for storing explosives and redesignated some sections of the CFR containing rules about storing explosives. As a result, Coast Guard regulations now contain incorrect language and references. This rule changes Coast Guard regulations to eliminate use of the term ''magazine'' in favor of the PHMSA terminology and to point the reader to the correct references in the PHMSA regulations.

This rule corrects a reference in § 154.151(c) to point to the correct section relating to Coast Guard acceptance of foreign vessels for U.S. service. The previous reference was incorrect.

This rule corrects a typographical error in 46 CFR 176.675, which points the reader to a nonexistent CFR section. Under the authority of 46 CFR 176.675, the Commandant extends the interval between certain examinations. However, § 176.675 erroneously lists § 176.605 as the section which establishes the normal interval for these examinations. The correct section is 46 CFR 176.600. There is no section 176.605 in Title 46 CFR.

This rule corrects a typographical error in 46 CFR 180.137(e)(3) and 180.137(e)(4). These rules address the length and strength of lines that attach life floats and buoyant apparatus to a vessel. The error directs the reader to 46 CFR 180.175(e)(3), which does not exist. The correct reference is 46 CFR 180.175(f)(3).

In 46 CFR 401.110(a)(16), the name of a Coast Guard office, ''Great Lakes Pilotage Division,'' is being changed to ''Great Lakes Pilotage Branch.''

This rule updates the address for the Coast Guard headquarters in hundreds of sections throughout Titles 46 and 49 in the CFR. Coast Guard Headquarters has moved to a new facility at St. Elizabeths Campus in the Anacostia neighborhood of southeast Washington, DC. This is a matter of agency management, and is thus exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553). Other addresses in 46 CFR are being updated based on information received from other agencies. For a list of each address change, see the Table of Changes in the docket for this rulemaking.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and E.O.s.

### *A. Regulatory Planning and Review*

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a significant regulatory action under section 3(f) of E.O. 12866 as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866. Nonetheless, we assessed the costs and benefits of the rule to ascertain its probable impacts on industry. Because this rule involves non-substantive changes and internal agency practices and procedures, it will not impose any additional costs on the public.

### *B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), rules exempt from the notice and comment requirements of the Administrative Procedure Act (APA) are not required to examine the impact of the rule on small entities. Nevertheless, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. There is no cost to this rule and we do not expect it to have an impact on small entities because the provisions of this rule are technical and non-substantive. This rule will have no substantive effect on the public and will impose no additional costs. Therefore, 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.

### *C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact Mr. Paul Crissy, U.S. Coast Guard; telephone 202–372–1093, email *Paul.H.Crissy@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### *D. Collection of Information*

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

### *E. Federalism*

A rule has implications for federalism under E.O. 13132 (''Federalism'') if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under E.O. 13132 and have determined that it does not have implications for federalism.

### *F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. This rule will not result in such an expenditure.

*G. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 (''Governmental Actions and Interference With Constitutionally Protected Property Rights'').

*H. Civil Justice Reform*

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

*I. Protection of Children*

We have analyzed this rule under E.O. 13045 (''Protection of Children From Environmental Health Risks and Safety Risks''). This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

*J. Indian Tribal Governments*

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

*K. Energy Effects*

We have analyzed this rule under E.O. 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards except to update references to industry standards that are already in use. Therefore, we did not consider the use of voluntary consensus standards in this rule.

*M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves amendments to regulations which are editorial or procedural. An environmental analysis checklist and a categorical exclusion determination are available in the docket for this rule where indicated under **ADDRESSES**.

**List of Subjects**

*46 CFR Part 1*

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

*46 CFR Parts 2, 170, and 174*

Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 5*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

*46 CFR Part 6*

Navigation (water), Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 7*

Law enforcement, Vessels.

*46 CFR Part 8*

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 10*

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

*46 CFR Part 11*

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

*46 CFR Part 12*

Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 15*

Reporting and recordkeeping requirements, Seamen, Vessels.

*46 CFR Part 16*

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR Part 25*

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 27*

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 28*

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 30*

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 31*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 32*

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 34*

Cargo vessels, Fire prevention, Marine safety.

*46 CFR Part 35*

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 39*

Cargo vessels, Fire prevention, Hazardous materials transportation, Marine safety, Occupational safety and

health, Reporting and recordkeeping requirements.

*46 CFR Part 42*

Penalties, Reporting and recordkeeping requirements, Vessels.

*46 CFR Parts 44, 50, 52, 53, 54, 56, 57, 58, 59, 61, 62, 63, 64, and 110*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 46*

Passenger vessels, Penalties, Reporting and recordkeeping requirements.

*46 CFR Part 69*

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

*46 CFR Parts 70 and 71*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 76*

Fire prevention, Marine safety, Passenger vessels.

*46 CFR Part 77*

Marine safety, Navigation (water), Passenger vessels.

*46 CFR Part 78*

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

*46 CFR Part 90*

Cargo vessels, Marine safety.

*46 CFR Part 91*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 92*

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

*46 CFR Part 95*

Cargo vessels, Fire prevention, Marine safety.

*46 CFR Part 96*

Cargo vessels, Marine safety, Navigation (water).

*46 CFR Part 97*

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

*46 CFR Part 105*

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

*46 CFR Part 107*

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 108*

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

*46 CFR Part 109*

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 111*

Vessels.

*46 CFR Parts 114, 175, and 177*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 115 and 176*

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 116*

Fire prevention, Marine safety, Passenger vessels, Seamen.

*46 CFR Part 125*

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Seamen.

*46 CFR Part 126*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 127*

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 147*

Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

*46 CFR Part 148*

Cargo vessels, Hazardous materials transportation, Marine safety.

*46 CFR Part 150*

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

*46 CFR Part 151*

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 153*

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 154*

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 159*

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 160*

Marine safety, Reporting and recordkeeping requirements.

*46 CFR Parts 161 and 164*

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 162*

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

*46 CFR Part 169*

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

*46 CFR Parts 171, 179, and 180*

Marine safety, Passenger vessels.

*46 CFR Part 172*

Cargo vessels, Hazardous materials transportation, Marine safety.

*46 CFR Part 188*

Marine safety, Oceanographic research vessels.

*46 CFR Part 189*

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

*46 CFR Part 193*

Fire prevention, Marine safety, Oceanographic research vessels.

*46 CFR Part 195*

Marine safety, Navigation (water), Oceanographic research vessels.

*46 CFR Part 197*

Benzene, Diving, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 199*

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 401*

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

*49 CFR Part 7*

Freedom of information, Reporting and recordkeeping requirements.

*49 CFR Parts 450 and 452*

Freight, Packaging and containers, Reporting and recordkeeping requirements, Safety.

*49 CFR Part 451*

Freight, Packaging and containers, Safety.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 1, 2, 5, 6, 7, 8, 10, 11, 12, 15, 16, 25, 27, 28, 30, 31, 32, 34, 35, 39, 42, 44, 46, 50, 52, 53, 54, 56, 57, 58, 59, 61, 62, 63, 64, 69, 70, 71, 76, 77, 78, 90, 91, 92, 95, 96, 97, 105, 107, 108, 109, 110, 111, 114, 115, 116, 125, 126, 127, 147, 148, 150, 151, 153, 154, 159, 160, 161, 162, 164, 169, 170, 171, 172, 174, 175, 176, 177, 179, 180, 188, 189, 193, 195, 197, 199, and 401; and 49 CFR parts 7, 450, 451, and 452 as follows:

## Title 46

## PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

**Authority:** 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; section 1.01–35 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 1.01–10:

■ a. Remove paragraphs (b)(1) and (2); and

■ b. Add paragraphs (c) and (d).

The additions read as follows:

### § 1.01–10 Organization.

* * * * *

(c) The Deputy for Operations Policy and Capabilities (CG–DCO–D), under the general direction of the Commandant, directs, supervises, and coordinates the activities of the Assistant Commandant for Response (CG–5R), the Assistant Commandant for Prevention Policy (CG–5P), and the Director of Operations Resource Management (CG–DCO–R).

(1) CG–5R directs, supervises, and coordinates the activities of:

(i) The Director of Incident Management and Preparedness Policy (CG–5RI), including—

(A) The Office of Environmental Response Policy (CG–MER),

(B) The Office of Search and Rescue (CG–SAR), and

(C) The Office of Crisis and Contingency Planning and Exercise Policy (CG–CPE); and

(ii) The Director of Law Enforcement, Maritime Security and Defense Operations Policy (CG–5RE) including:

(A) The Office of Law Enforcement Policy (CG–MLE),

(B) The Office of Maritime Security Response Policy (CG–MSR), and

(C) The Office of Counterterrorism and Defense Operations Policy (CG–DOD). (2) CG–5P directs, supervises and coordinates the activities of:

(i) The Director of Commercial Regulations and Standards (CG–5PS) including

(A) The Office of Design and Engineering Standards (CG–ENG),

(B) The Office of Operating and Environmental Standards (CG–OES), and

(C) The Office of Standards Evaluation and Development (CG–REG); and

(ii) The Director of Inspections and Compliance (CG–5PC) including

(A) The Office of International and Domestic Port Assessments (CG–PSA),

(B) The Office of Auxiliary and Boating Safety (CG–BSX),

(C) The Office of Commercial Vessel Compliance (CG–CVC),

(D) The Office of Port & Facility Compliance (CG–FAC), and

(E) The Office of Investigations and Casualty Analysis (CG–INV); and

(iii) The Director of Marine Transportation Systems (CG–5PW) including

(A) The Office of Bridge Programs (CG–BRG),

(B) The Office of Waterways and Ocean Policy (CG–WWM), and

(C) The Office of Navigation Systems (CG–NAV); and

(iv) CG–5PC exercises technical control over the Commanding Officer, National Maritime Center (NMC), and, through the District Commander, supervises the administration of the Marine Safety Division of District Offices and Officers in Charge, Marine Inspection.

(3) CG–DCO–R directs, supervises and coordinates the activities of

(i) The Office of Workforce Management (CG–DCO–R–1),

(ii) The Office of Budget Development (CG–DCO–R–2),

(iii) The Office of Budget Execution (CG–DCO–R–3), and

(iv) The Office of Information Resources (CG–DCO–R–6).

(d) The Port Safety and Security programs administered by the Chief, Office of Port Security Assessments (CG–PSA), and the Marine Environmental Response programs administered by the Chief, Office of Environmental Response Policy (CG–MER), are guided by regulations contained in 33 CFR chapter I.

(1) The Deputy for Operations Policy and Capabilities (CG–DCO–D) exercises technical control over the Commanding Officer, National Maritime Center (NMC), and, through the District Commander, supervises the administration of the Marine Safety Division of District Offices and Officers in Charge, Marine Inspection.

(i) The Director of Commercial Regulations and Standards (CG–5PS), under the general direction and supervision of the Deputy for Operations Policy and Capabilities (CG–DCO–D), establishes federal policies for development of marine safety, security, and environmental protection treaties, laws, and regulations; develops safety, security, and environmental protection standards for the maritime industry; integrates all marine safety, security, and environmental protection regulatory programs; prepares legislation, regulations, and industry guidance for new safety and environmental protection programs; and maintains an active program for development of third party consensus industry standards.

(A) The Chief, Office of Design and Engineering Standards (CG–ENG), at Headquarters, under the direction of the Assistant Commandant for Prevention Policy (CG–5P) and the Director of Commercial Regulations and Standards (CG–5PS), manages the program for defining the overall regulatory approach for vessels, offshore structures, and other marine systems incorporating safety considerations regarding the role of the human element; develops policies and regulations on load line matters and supervises classification societies authorized to assign load lines on behalf of the Coast Guard; oversees the development and maintenance of programs that incorporate risk-based methods in making safety determinations and policies; and oversees technical research and development for safety and environmental protection associated with marine vessels, structures and facilities.

(B) The Chief, Office of Operating and Environmental Standards (CG–OES), at Headquarters, under the direction of the Assistant Commandant for Prevention Policy (CG–5P) and the Director of Commercial Regulations and Standards (CG–5PS), coordinates and integrates program standards for personnel qualification, vessel manning, vessel and facility operations, cargo systems and handling, and environmental protection; develops and maintains standards, regulations, and industry guidance for maritime industry operations to prevent deaths, injuries, property damage, and environmental harm; develops and maintains safety standards and regulations for commercial fishing industry vessels and uninspected commercial vessels; and develops and maintains health and safety standards and regulations for U.S.-inspected vessels.

(C) The Chief, Office of Standards Evaluation and Development (CG–REG), at Headquarters, under the Direction of the Assistant Commandant for Prevention Policy (CG–5P) and the Director of Commercial Regulations and Standards (CG–5PS), coordinates the development of new standards, programs, and regulations across all technical and operational areas of marine safety and environmental protection; provides comprehensive analytical support for all standards assessment and development efforts; coordinates development of measures of effectiveness for assessing regulatory programs and consensus standards; and oversees the Coast Guard's rulemaking development program.

(D) The Commanding Officer, Marine Safety Center, under the Direction of the Assistant Commandant for Prevention Policy (CG–5P) and the Director of Commercial Regulations and Standards (CG–5PS), conducts reviews and approvals of plans, calculations, and other materials concerning the design, construction, alterations, and repair of commercial vessels to determine conformance with the marine inspection laws, regulations, and implementing directions, and administers the U.S. Tonnage Measurement program.

(ii) The Director of Inspections and Compliance (CG–5PC), under the general direction and supervision of the Assistant Commandant for Prevention Policy (CG–5P), acts as Program Manager for the Marine Safety, Security, and Environmental Protection Programs; directs, coordinates, and integrates the Coast Guard's marine safety and environmental protection compliance programs, contingency planning, response operations, and investigations programs; establishes and coordinates field implementation policies and priorities for all marine safety commands and units; serves as the focal point for field support and technical guidance; and provides oversight of marine documentation and marine personnel administration matters.

(A) The Chief, Office of Commercial Vessel Compliance (CG–CVC), at Headquarters, under the direction of the Assistant Commandant for Prevention Policy (CG–5P) and the Director of Inspections and Compliance (CG–5PC), administers and balances all marine safety and environmental protection compliance programs, including direction of Coast Guard activities and oversight of third parties and industry programs; develops, publishes, and maintains program policies for vessel compliance, interprets standards and regulations, and provides field guidance for execution and enforcement; administers the marine inspection program, commercial fishing vessel examination program, and foreign vessel boarding program for the enforcement of commercial vessel material and operational safety standards; and supervises the administration of the manning of U.S. vessels and credentialing of U.S. mariners.

(B) The Chief, Office of Environmental Response Policy (CG–MER), at Headquarters, under the Direction of the Deputy for Operations Policy and Capabilities (CG–DCO–D) and the Assistant Commandant for Response Policy (CG–5R), coordinates and integrates field planning, preparedness, and response operations for pollution incidents, natural disasters, marine accidents, terrorism, and other threats to public safety, the marine environment, or marine transportation and commerce; develops, publishes, and maintains program policies for preparedness and response, interprets laws and regulations, and provides field guidance for execution; provides guidance regarding emergency authorities of the Captain of the Port (COTP); and administers Office programs for ports and waterway management, bridging compliance, and response efforts with an active presence in the marine environment.

(C) The Chief, Office of Investigations and Analyses (CG–INV), at Headquarters, under the direction of the Assistant Commandant for Prevention Policy (CG–5P) and the Director of Inspections and Compliance (CG–5PC), reviews investigations of marine casualties; manages, develops policy for and evaluates domestic and international programs and processes associated with investigations of marine casualties and injuries; manages analysis of casualties and casualty data, civil penalties and other remedial programs (including proceedings to suspend or revoke Coast Guard credentials held by mariners); and manages marine employer drug and alcohol testing programs.

(D) The Commanding Officer, Coast Guard National Maritime Center (NMC), under technical control of the Director of Inspections and Compliance (CG–5PC), administers the mariner credentialing program; evaluates merchant mariners for suitability for service; issues merchant mariner credentials; evaluates and conducts oversight of approved courses; and exercises operational and administrative control over the NMC detachments.

(iii) The Director of Operations Resource Management (CG–DCO–R), under the general direction and supervision of the Deputy Commandant for Operations (CG–DCO), serves as Facility Manager for the marine safety programs; coordinates and integrates financial, informational, and human resources; plans, acquires, develops, and allocates resources for development and execution of the Coast Guard's marine safety programs; provides the focal point for all resource issues in support of the Standards and Operations Directorates; and oversees the development and management of the Coast Guard's direct user fee program.

(2) The Judge Advocate General and Chief Counsel of the Coast Guard (CG–094), under the general direction of and in coordination with the General Counsel, Department of Homeland Security, is the senior legal advisor to the Commandant, Vice Commandant, and senior staff officers. The Judge Advocate General advises on all cases and controversies arising under the various authorities of the Coast Guard involving alleged violations of international, maritime, navigation, and vessel inspection laws, or regulations prescribed there under and published in this chapter or in 33 CFR chapter I, and reviews appeals to the Commandant from actions derived from these authorities. On completion of such a review, the Judge Advocate General prepares a proposed action for the Commandant's consideration or, in appropriate cases, takes final action on behalf of, and as directed by, the Commandant.

**§ 1.03–15 [Amended]**

■ 3. In § 1.03–15(h)(3), following the text ''must be addressed to'', remove the text ''Commandant (CG–5P), Coast Guard Headquarters, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581,'' and add, in its place, the text

''Commandant (CG–5PC), Attn: Director of Inspections and Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501,''.

**§ 1.03–40 [Amended]**

■ 4. In § 1.03–40, remove the text ''Director of Prevention Policy, Commandant (CG–54)'' wherever it appears, and add, in its place, the text ''Director of Inspections and Compliance (CG–5PC)''.

**§ 1.03–45 [Amended]**

■ 5. In § 1.03–45, remove the text ''Assistant Commandant for Prevention Policy (CG–5P)'' wherever it appears, and add, in its place, the text ''Director of Inspections and Compliance (CG–5PC)''.

**§ 1.03–50 [Amended]**

■ 6. In § 1.03–50, remove the text ''Commandant (CG–DCO–D)'' and add, in its place, the text ''Commandant (CG–5P)''.

## PART 2—VESSEL INSPECTIONS

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

**Authority:** Sec. 622, Pub. L. 111–281; 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 8. Revise § 2.10–1(a) to read as follows:

**§ 2.10–1 Applicability.**

(a) This subpart establishes inspection and examination fees for all owners or operators requesting certification, including those for vessels that are required to have a Certificate of Inspection and those required to have a Certificate of Compliance.

* * * * *

**§ 2.10–20 [Amended]**

■ 9. In § 2.10–20(e), remove the text ''Commandant (CG–DCO–83) is: Commandant (CG–DCO–83), United States Coast Guard, 2100 2nd St. SW., Stop 7681, Washington, DC 20593–7681'' and add, in its place, the text ''Commandant (CG–DCO–83), Attn: Office of Budget Execution, U.S. Coast Guard Stop 7318, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7318''.

■ 10. Revise § 2.10–120(b) to read as follows:

**§ 2.10–120 Overseas inspection and examination fees.**

* * * * *

(b) The overseas inspection and examination fee for each vessel must be received before an overseas inspection or examination is conducted.

**§ 2.45–5 [Amended]**

■ 11. In § 2.45–5(a), following the text ''available for inspection at the'', remove the text ''Coast Guard's Office of Design and Engineering Systems (CG–ENG), 2100 Second Street SW., Washington, DC 20593–0001'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 2.45–25 [Amended]**

■ 12. In § 2.45–25(a), following the text ''English language to'', remove the text ''U.S. Coast Guard, Commandant (CG–ENG), Office of Design and Engineering Standards, 2100 Second Street SW., Stop 7126, Washington DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 2.75–10 [Amended]**

■ 13. In § 2.75–10(b), following the text ''addressed to the'', remove the text ''Commandant (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 2.75–25 [Amended]**

■ 14. In § 2.75–25(c)(1), following the text ''letterhead paper to the'', remove the text ''Commandant (CG–5PS), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–5PS), Attn: Director of Commercial Regulations, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

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

**Authority:** 46 U.S.C. 2103, 7101, 7301, 7701; Department of Homeland Security Delegation No. 0170.1.

**§ 5.713 [Amended]**

■ 16. In § 5.713(b), following the text ''should be addressed to'', remove the text ''Commandant (CG–094), U.S. Coast Guard, 2100 2nd St. SW., Stop 7121, Washington, DC 20593–7121'' and add, in its place, the text ''Commandant (CG–094), Attn: Judge Advocate General (JAG) and Chief Counsel, U.S. Coast Guard Stop 7213, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7213''.

**§ 5.903 [Amended]**

■ 17. In § 5.903(b), following the text ''addressed to the'', remove the text ''Commandant, U.S. Coast Guard, 2100 2nd St. SW., Stop 7121, Washington, DC 20593–7121'' and add, in its place, the text ''Commandant (CG–094), Attn: Judge Advocate General (JAG) and Chief Counsel, U.S. Coast Guard Stop 7213, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7213''.

## PART 6—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS [1]

■ 18. The authority citation for part 6 continues to read as follows:

**Authority:** Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (*see* 46 U.S.C. App. note prec. 1); Department of Homeland Security Delegation No. 0170.1.

**§ 6.06 [Amended]**

■ 19. In § 6.06(b), following the text ''established, or to the'', remove the text ''Commandant (CG–CVC), U.S. Coast Guard, 2100 2nd St. SW., Stop 7581, Washington, DC 20593–7581'' and add, in its place, the text ''Commandant (CG–CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501''.

## PART 7—BOUNDARY LINES

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

**Authority:** 14 U.S.C. 633; 33 U.S.C. 151, 1222; Department of Homeland Security Delegation No. 0170.1.

**§ 7.55 [Amended]**

■ 21. In § 7.55(b), following the text ''75°31.9′ W.; thence to'', remove the text ''Oregon Inlet Radiobeacon'' and add, in its place, the text ''Oregon Inlet Jetty Light''.

[1] This is also codified in 33 CFR part 19.

## PART 8—VESSEL INSPECTION ALTERNATIVES

■ 22. The authority citation for part 8 continues to read as follows:

**Authority:** 33 U.S.C. 1903, 1904, 3803 and 3821; 46 U.S.C. 3103, 3306, 3316, and 3703; Department of Homeland Security Delegation No. 0170.1 and Aug. 8, 2011 Delegation of Authority, Anti-Fouling Systems.

### § 8.110 [Amended]

■ 23. In § 8.110(a), following the text ''inspection at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards, (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 8.440 [Amended]

■ 24. In § 8.440(d)(3), following the text ''society to the'', remove the text ''Chief, Office of Commercial Vessel Compliance, Commandant (CG–CVC), U.S. Coast Guard, 2100 2nd St. SW., Stop 7581 Washington, DC 20593–7581'' and add, in its place, the text ''Commandant (CG–CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501''.

## PART 10—MERCHANT MARINER CREDENTIAL

■ 25. The authority citation for part 10 continues to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 72; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8906 and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1.

### § 10.103 [Amended]

■ 26. In § 10.103(a), following the text ''inspection at the'', remove the text ''Coast Guard, Marine Personnel Qualifications Division (CG–OES–1), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES–1), Attn: Marine Personnel Qualifications Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

■ 27. The authority citation for part 11 continues to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

### § 11.102 [Amended]

■ 28. In § 11.102(a), following the text ''inspection at the'', remove the text ''Coast Guard, Marine Personnel Qualifications Division (CG–OES–1), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES–1), Attn: Marine Personnel Qualifications Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

■ 29. The authority citation for part 12 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

### § 12.01–3 [Amended]

■ 30. In § 12.01–3(a), following the text ''Also, it is available for inspection at the'', remove the text ''Coast Guard, Marine Personnel Qualifications Division (CG–OES–1), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES–1), Attn: Marine Personnel Qualifications Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 15—MANNING REQUIREMENTS

■ 31. The authority citation for part 15 continues to read as follows:

**Authority:** 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 8103; and Department of Homeland Security Delegation No. 0170.1.

### § 15.105 [Amended]

■ 32. In § 15.105(a) following the text ''Also, it is available for inspection at the'', remove the text ''Coast Guard, Office of Operating and Environmental Standards (CG–OES), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES–1), Attn: Marine Personnel Qualifications Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 16—CHEMICAL TESTING

■ 33. The authority citation for part 16 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; Department of Homeland Security Delegation No. 0170.1.

### § 16.500 [Amended]

■ 34. In 16.500(b), following the text ''by mail to'', remove the text ''Commandant (CG–INV), 2100 2nd St. SW., Stop 7581, Washington, DC 20593–7581'' and add, in its place, the text ''Commandant (CG–INV), Attn: Office of Investigations and Casualty Analysis, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501''.

## PART 25—REQUIREMENTS

■ 35. The authority citation for part 25 continues to read as follows:

**Authority:** 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1.

### § 25.01–3 [Amended]

■ 36. In § 25.01–3(a), following the text ''on file at the'', remove the text ''U.S. Coast Guard, Office of Commercial Vessel Compliance (CG–CVC), 2100 2nd St. SW., Stop 7581, Washington, DC 20593–7581 or at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501 or''.

## PART 27—TOWING VESSELS

■ 37. The authority citation for part 27 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 4102 (as amended by Pub. L. 104–324, 110 Stat. 3901); Department of Homeland Security Delegation No. 0170.1.

■ 38. In § 27.101, revise the definition of ''*Fixed fire-extinguishing system*'' to read as follows:

### § 27.101 Definitions.

* * * * *

*Fixed fire-extinguishing system* means:

(1) A carbon dioxide system that satisfies 46 CFR 76.15 and the system labeling requirements in 46 CFR 78.47–9 and 78.47–11 and that is approved by the Commandant; or

(2) A clean-agent system that satisfies 46 CFR 95.16 and is approved by the Commandant; or

(3) A manually-operated water-mist system that satisfies NFPA 750

(incorporated by reference; see § 27.102) and that is approved by the Commandant; or

* * * * *

**§ 27.102 [Amended]**

■ 39. In § 27.102(a), following the text, ''available at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd Sreet SW., Stop 7126, Washington, DC 20593–7126, or'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available''.

## PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 40. The authority citation for part 28 continues to read as follows:

**Authority:** 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

**§ 28.40 [Amended]**

■ 41. In § 28.40(a), following the text ''on file at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 or at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509 or you may contact''.

**§ 28.50 [Amended]**

■ 42. In § 28.50, in the definition of ''*Coast Guard Representative''* following the texts ''industry vessels. Contact'', remove the text ''Office of Vessel Activities, Fishing Vessels Division, Commandant (CG–CVC–3), U.S. Coast Guard, 2100 2nd St. SW., Stop 7581, Washington, DC 20593–7581'' and add, in its place, the text ''Commandant (CG–CVC–3); Attn: Fishing Vessels Division, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501''.

## PART 30—GENERAL PROVISIONS

■ 43. The authority citation for part 30 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; Department of Homeland Security Delegation No. 0170.1; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

**§ 30.01–3 [Amended]**

■ 44. In § 30.01–3(a) following the text, ''Also, it is available for inspection at the'', remove the text ''Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, 202–372–1405'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1405''.

**§ 30.10–35 [Amended]**

■ 45. In § 30.10–35, remove the text ''Office of the Commandant, U.S. Coast Guard, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501''.

**§ 30.30–5 [Amended]**

■ 46. In § 30.30–5(a), following the text ''should be sent to'', remove the text ''Commandant (CG–CVC), 2100 2nd St. SW., Stop 7581, Washington, DC 20593–7581'' and add, in its place, the text ''Commandant (CG–CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501''.

■ 47. Revise § 30.30–7 to read as follows:

**§ 30.30–7 Availability of materials.**

Evaluation materials submitted in accordance with this subpart will be available for inspection and copying at Coast Guard Headquarters. Contact Commandant (CG–CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501; telephone 202–372–1251.

## PART 31—INSPECTION AND CERTIFICATION

■ 48. The authority citation for part 31 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

**§ 31.01–3 [Amended]**

■ 49. In § 31.01–3(b), following the text ''is available from'', remove the text ''Commandant (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126; telephone (202) 372–1372; or fax (202) 372–1925'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1372 or fax 202–372–1925''.

**§ 31.10–1 [Amended]**

■ 50. In § 31.10–1(b) following the text ''These standards may'', remove the text ''be also examined at the Office of the Commandant (CG–5PS), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''also be examined at the Coast Guard Headquarters. Contact Commandant (CG–5PS), Attn: Director of Commercial Regulations and Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 31.10–5 [Amended]**

■ 51. In § 31.10–5(a), following the text ''submission to the'', remove the text ''Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

■ 52. The authority citation for part 32 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

**§ 32.01–1 [Amended]**

■ 53. In § 32.01–1(a), following the text ''on file at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 or'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. You may also inspect this material''.

**§ 32.15–15 [Amended]**

■ 54. In § 32.15–15(e) following the text ''be directed to the'', remove the text ''Commandant (CG–5213), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126; telephone (202) 372–1378 or fax (202) 372–1925'' and add, in its place, the text ''Commandant (CG–ENG–3), Attn: Systems Engineering Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1378 or fax 202–372–1925''.

**§ 32.53–3 [Amended]**

■ 55. In § 32.53–3(b), remove the text ''Commandant (CG–OES), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 34—FIREFIGHTING EQUIPMENT

■ 56. The authority citation for part 34 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 34.01–15 [Amended]**

■ 57. In § 34.01–15(a) following the text ''Also, it is available for inspection at the'', remove the text ''Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 35—OPERATIONS

■ 58. The authority citation for part 35 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

**§ 35.01–3 [Amended]**

■ 59. In § 35.01–3 following the text ''on file at the'', remove the text ''U.S. Coast Guard, Office of Operating and Environmental Standards, (CG–OES), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 39—VAPOR CONTROL SYSTEMS

■ 60. The authority citation for part 39 is revised to read as follows:

**Authority:** 33 U.S.C. 1225, 1231; 42 U.S.C. 7511b(f)(2); 46 U.S.C. 3306, 3703, 3715(b); E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 39.1003 [Amended]**

■ 61. In § 39.1003 in the definition of ''*Marine Safety Center (MSC)*'', remove the text ''the Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd Street SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203 for visitors. Send all mail to Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

**§ 39.1005 [Amended]**

■ 62. In § 39.1005(a) following the text ''on file at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Commandant (CG–ENG), Attn: Office of Design and Engineering Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

■ 63. The authority citation for part 42 continues to read as follows:

**Authority:** 46 U.S.C. 5101–5116; Department of Homeland Security Delegation No. 0170.1; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

**§ 42.05–20 [Amended]**

■ 64. In § 42.05–20, remove the text ''Commandant, U.S. Coast Guard, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 44—SPECIAL SERVICE LIMITED DOMESTIC VOYAGES

■ 65. The authority citation for part 44 continues to read as follows:

**Authority:** 46 U.S.C. 5101–5116; Department of Homeland Security Delegation No. 0170.1.

■ 66. Revise § 44.320(a) to read as follows:

**§ 44.320 Submission of plans and calculations.**

* * * * *

(a) Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203 for visitors. Send all mail to Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410; or.

* * * * *

## PART 46—SUBDIVISION LOAD LINES FOR PASSENGER VESSELS

■ 67. The authority citation for part 46 continues to read as follows:

**Authority:** 46 U.S.C. 3306; 46 U.S.C. 5101–5116; E.O. 12234, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 46.10–20 [Amended]**

■ 68. In § 46.10–20, remove the text ''Commandant, U.S. Coast Guard, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 50—GENERAL PROVISIONS

■ 69. The authority citation for part 50 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

**§ 50.10–20 [Amended]**

■ 70. In § 50.10–20, remove the text ''Office of the Commandant, U.S. Coast Guard, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–00), Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7000''.

**§ 50.10–23 [Amended]**

■ 71. In § 50.10–23, remove the text ''Commanding Officer, U.S. Coast Guard

Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024 for visitors. Send all mail to Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard, Suite 400, Arlington, VA 22203 for visitors. Send all mail to Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard, Suite 400, Arlington, VA 20598–7410''.

## PART 52—POWER BOILERS

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

**Authority:** 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 52.01–1 [Amended]

■ 73. In § 52.01–1(a), following the text ''is also available for inspection at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the sources listed in paragraph (b) of this section''.

## PART 53—HEATING BOILERS

■ 74. The authority citation for part 53 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 53.01–1 [Amended]

■ 75. In § 53.01–1(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. You may also inspect this material at''.

## PART 54—PRESSURE VESSELS

■ 76. The authority citation for part 54 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 54.01–1 [Amended]

■ 77. In § 54.01–1(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

### § 54.05–30 [Amended]

■ 78. In § 54.05–30(b), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126. .'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 56—PIPING SYSTEMS AND APPURTENANCES

■ 79. The authority citation for part 56 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

### § 56.01–2 [Amended]

■ 80. In § 56.01–2(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 57—WELDING AND BRAZING

■ 81. The authority citation for part 57 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 57.02–1 [Amended]

■ 82. In § 57.02–1(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

■ 83. The authority citation for part 58 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 58.03–1 [Amended]

■ 84. In § 58.03–1(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 59—REPAIRS TO BOILERS, PRESSURE VESSELS AND APPURTENANCES

■ 85. The authority citation for part 59 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; Department of Homeland Security Delegation No. 0170.1.

### § 59.01–2 [Amended]

■ 86. In § 59.01–2(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 61—PERIODIC TESTS AND INSPECTIONS

■ 87. The authority citation for part 61 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; E.O. 12234, 45 FR 58801,

3 CFR 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 61.03–1 [Amended]**

■ 88. In § 61.03–1(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 62—VITAL SYSTEM AUTOMATION

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

**Authority:** 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 62.05–1 [Amended]**

■ 90. In § 62.05–1(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also from the sources in paragraph (b) of this section''.

## PART 63—AUTOMATIC AUXILIARY BOILERS

■ 91. The authority citation for part 63 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 63.05–1 [Amended]**

■ 92. In § 63.05–1(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the sources listed in paragraphs (b) through (g) of this section''.

■ 93. In § 63.10–1, revise the introductory text to read as follows:

**§ 63.10–1 Test procedures and certification report.**

Two copies of the following items must be submitted. Visitors may deliver them to the Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or they may be transmitted by mail to the Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC.*

* * * * *

**§ 63.25–9 [Amended]**

■ 94. In § 63.25–9(a), remove the text ''Commanding Officer (MSC), USCG Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or they may be transmitted by mail to the Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''

## PART 64—MARINE PORTABLE TANKS AND CARGO HANDLING SYSTEMS

■ 95. The authority citation for part 64 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1.

**§ 64.2 [Amended]**

■ 96. In § 64.2(a), remove the text ''the U.S. Coast Guard, Deputy for Operations Policy and Capabilities (CG–DCO–D), U.S. Coast Guard, 2100 2nd Street SW., Stop 7355, Washington, DC 20593–7355, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–DCO–D), Attn: Deputy for Operations Policy and Capabilities, U.S. Coast Guard Stop 7318, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7318. The material is also''.

## PART 69—MEASUREMENT OF VESSELS

■ 97. The authority citation for part 69 continues to read as follows:

**Authority:** 46 U.S.C. 2301, 14103; Department of Homeland Security Delegation No. 0170.1.

■ 98. In § 69.9, revise the definition of ''*Commandant*'' to read as follows:

**§ 69.9 Definitions.**

* * * * *

*Commandant* means Commandant of the Coast Guard at the following addresses: Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203 for visitors. Send all mail to Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC.*

* * * * *

**§ 69.15 [Amended]**

■ 99. In § 69.15(a) following the text ''by visitors from the'', remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or by writing to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203 or by writing to Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 70—GENERAL PROVISIONS

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

**Authority:** 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

■ 101. In § 70.10–1, revise the definition of ''*Headquarters*'' to read as follows:

**§ 70.10–1 Definitions.**

* * * * *

*Headquarters* means the Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

* * * * *

**§ 70.35–5 [Amended]**

■ 102. In § 70.35–5(a), following the text ''These standards may'', remove the text ''be also examined at the Office of the

Commandant (CG–5PS), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, or at'' and add, in its place, the text ''also be examined at Coast Guard Headquarters. Contact Commandant (CG–5PS), Attn: Director of Commercial Regulations, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509, or contact''.

## PART 71—INSPECTION AND CERTIFICATION

■ 103. The authority citation for part 71 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

### § 71.15–5 [Amended]

■ 104. In § 71.15–5(b), following the text ''supplements, is available'', remove the text ''from Commandant (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126; telephone (202) 372–1372; or fax (202) 372–1925'' and add, in its place, the text ''at Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1372 or fax 202–372–1925''.

### § 71.65–15 [Amended]

■ 105. In § 71.65–15(a)(2), remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or transmitted by mail to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''the Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or transmitted by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 76—FIRE PROTECTION EQUIPMENT

■ 106. The authority citation for part 76 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 76.01–2 [Amended]

■ 107. In § 76.01–2(a), remove the text ''the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the sources listed in paragraphs (b) through (d) of this section''.

## PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 108. The authority citation for part 77 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 77.01–3 [Amended]

■ 109. In § 77.01–3(a), remove the text ''the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 78—OPERATIONS

■ 110. The authority citation for part 78 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

### § 78.01–2 [Amended]

■ 111. In § 78.01–2(a), remove the text ''the U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 90—GENERAL PROVISIONS

■ 112. The authority citation for part 90 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 90.10–14 [Amended]

■ 113. In § 90.10–14, remove the text ''Office of the Commandant, U.S. Coast Guard, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–00), Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7000''.

### § 90.35–5 [Amended]

■ 114. In § 90.35–5, following the text ''These standards may'', remove the text ''be also examined at the Office of the Commandant (CG–5PS), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, or'' and add, in its place, the text ''also be examined at Coast Guard Headquarters. Contact Commandant (CG–5PS), Attn: Director of Commercial Regulations, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The standards are also available''.

## PART 91—INSPECTION AND CERTIFICATION

■ 115. The authority citation for part 91 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; 46 U.S.C. Chapter 701; Executive Order 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

### § 91.15–5 [Amended]

■ 116. In § 91.15–5(b), following the text ''is available from'' remove the text ''Commandant (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126; telephone (202) 372–1372; or fax (202) 372–1925'' and add, in its place, the text ''at Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1372 or fax 202–372–1925''.

### § 91.55–15 [Amended]

■ 117. In § 91.55–15(a)(2), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant

(CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 92—CONSTRUCTION AND ARRANGEMENT

■ 118. The authority citation for part 92 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.0. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 92.01–2 [Amended]

■ 119. In § 92.01–2(a), remove the text ''the Coast Guard, Office of Design and Engineering Standards, (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also from the source listed in paragraph (b) of this section''.

## PART 95—FIRE PROTECTION EQUIPMENT

■ 120. The authority citation for part 95 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 95.01–2 [Amended]

■ 121. In § 95.01–2(a), remove the text ''the Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, 202–372–1405, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; telephone 202–372–1405. The material is also available from the sources listed in paragraphs (b) and (c) of this section''.

## PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 122. The authority citation for part 96 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 96.01–3 [Amended]

■ 123. In § 96.01–3(a), remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 97—OPERATIONS

■ 124. The authority citation for part 97 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 5111, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

### § 97.01–2 [Amended]

■ 125. In § 97.01–2(a), remove the text ''the U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, or at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509 or contact.''

## PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

■ 126. The authority citation for part 105 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

### § 105.01–3 [Amended]

■ 127. In § 105.01–3(a), remove the text ''the Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, 202–372–1405, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1405. The material is also available from the source listed in paragraph (b) of this section''.

## PART 107—INSPECTION AND CERTIFICATION

■ 128. The authority citation for part 107 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3307; 46 U.S.C. 3316; Department of Homeland Security Delegation No. 0170.1; § 107.05 also issued under the authority of 44 U.S.C. 3507.

■ 129. In § 107.111, revise the definition of ''*Headquarters*'' to read as follows:

### § 107.111 Definitions.

* * * * *

*Headquarters* means Commandant (CG–00), Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7000.

* * * * *

■ 130. In § 107.117, revise paragraphs (a) and (b) to read as follows:

### § 107.117 Coast Guard addresses.

* * * * *

(a) For approval by Commandant (CG–CVC)—Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501.

(b) For approval by Commandant (CG–ENG)—Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

### § 107.205 [Amended]

■ 131. In § 107.205(b), following the text ''is available'', remove the text ''from Commandant (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126; telephone (202) 372–1372; or fax (202) 372–1925'' and add, in its place, the text ''at Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1372 or fax 202–372–1925''.

■ 132. Revise § 107.317(b) to read as follows:

### § 107.317 Addresses for submittal of plans, specifications, and calculations.

* * * * *

(b) By visitors to the Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite

400, Arlington, VA 20598–7410, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC*.

* * * * *

## PART 108—DESIGN AND EQUIPMENT

■ 133. The authority citation for part 108 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; Department of Homeland Security Delegation No. 0170.1.

### § 108.101 [Amended]

■ 134. In § 108.101(a), following the text ''on file at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 or'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available''.

## PART 109—OPERATIONS

■ 135. The authority citation for part 109 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; Department of Homeland Security Delegation No. 0170.1.

### § 109.105 [Amended]

■ 136. In § 109.105(a), following the text ''on file at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 or'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available''.

## PART 110—GENERAL PROVISIONS

■ 137. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C 1333; 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; § 110.01–2 also issued under 44 U.S.C. 3507.

■ 138. In § 110.10–1, revise paragraphs (a), (g)(1). (4), (10), (14), (16), (17), (18), (20), (21), (22), (24), (25), (27,), and (o)(10) to read as follows:

### § 110.10–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. The word ''should,'' when used in material incorporated by reference, is to be construed the same as the words ''must'' or ''shall'' for the purposes of this subchapter. All approved material is available for inspection 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/code_of_federal_regulations/ibr_locations.html*. The material is also available for inspection at Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the sources listed among the succeeding paragraphs of this section.

* * * * *

(g) * * *

(1) IEC 60068–2–52, Environmental Testing Part 2: Tests—Test Kb: Salt Mist, Cyclic (Sodium Chloride Solution), Second Edition (1996) (''IEC 60068–2–52''), 110.15–1;

* * * * *

(4) IEC 60332–1 Tests on Electric Cables Under Fire Conditions, Part 1: Test on a Single Vertical Insulated Wire or Cable, Third Edition (1993) (''IEC 60332–1''), 111.30–19;

* * * * *

(10) IEC 60079–6 Electrical Apparatus for Explosive Gas Atmospheres—Part 6: Oil Immersion ''o'', Second Edition (1995) (''IEC 60079–6''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15; 111.105–17;

* * * * *

(14) IEC 60079–18 Electrical Apparatus for Explosive Gas Atmospheres—Part 18: Encapsulation ''m'', First Edition (1992) (''IEC 60079–18''), 111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15; 111.105–17;

* * * * *

(16) IEC 60092–201 Electrical Installation in Ships, Part 201: System Design-General, Fourth Edition (1994) (''IEC 60092–201''), 111.70–3; 111.81–1;

(17) IEC 60092–202 Amendment 1 Electrical Installation in Ships, Part 202: System Design-Protection (1996) (''IEC 60092–202''), 111.12–7; 111.50–3; 111.53–1; 111.54–1;

(18) IEC 60092–301 Amendment 2 Electrical Installation in Ships, Part 301: Equipment-Generators and Motors, (1995) (''IEC 60092–301''), 111.12–7; 111.25–5; 111.70–1;

* * * * *

(20) IEC 60092–303 Electrical Installation in Ships, Part 303: Equipment-Transformers for Power and Lighting, Third Edition (1980) (''IEC 60092–303''), 111.20–15;

(21) IEC 60092–304 Amendment 1 Electrical Installation in Ships, Part 304: Equipment-Semiconductor Convertors (1995) (''IEC 60092–304''), 111.33–3; 111.33–5;

(22) IEC 60092–306 Electrical Installation in Ships, Part 306: Equipment-Luminaries and accessories, Third Edition (1980) (''IEC 60092–306''), 111.75–20; 111.81–1;

* * * * *

(24) IEC 60092–353 Electrical Installations in Ships—Part 353: Single and Multicore Non-Radial Field Power Cables with Extruded Solid Insulation for Rated Voltages 1kV and 3kV, Second Edition (1995) (''IEC 60092–353''), 111.60–1; 111.60–3; 111.60–5;

(25) IEC 60092–401 Electrical Installations in Ships, Part 401: Installation and Test of completed Installation with amendment 1 (1987) and amendment 2 (1997), Third Edition (1980) (''IEC 60092–401''), 111.05–9; 111.81–1;

* * * * *

(27) IEC 60092–503 Electrical installations in ships, Part 503: Special features: A.C. supply systems with voltages in the range of above 1kV up to and including 11kV, First Edition (1975) (''IEC 60092–503''), 111.30–5;

* * * * *

(o) * * *

(10) UL 913, Standard for Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division 1, Hazardous (Classified) Locations, Sixth Edition, Aug. 8, 2002 (Revisions through and including Dec. 15, 2003) (''UL 913''), 111.105–11;

* * * * *

■ 139. In § 110.15–1, revise the definition of ''*Corrosion resistant material or finish''* to read as follows:

### § 110.15–1 Definitions.

* * * * *

*Corrosion resistant material or finish* means any material or finish that meets the testing requirements of ASTM B 117 (incorporated by reference; see 46 CFR 110.10–1) or test Kb in IEC 60068–2–52.

* * * * *

**§ 110.25–3 [Amended]**

■ 140. In § 110.25–3(a)(1), remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or by mail to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

■ 141. The authority citation for part 111 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

**§ 111.05–9 [Amended]**

■ 142. In § 111.05–9, remove the text ''IEC 92–401'' and add, in its place, the text ''IEC 60092–401''.

**§ 111.12–7 [Amended]**

■ 143. In § 111.12–7(b), remove the text ''IEC 92–202 and IEC 92–301'' and add, in its place, the text ''IEC 60092–202 and IEC 60092–301''.

**§ 111.20–15 [Amended]**

■ 144. In § 111.20–15, remove the text ''IEC 92–303'' and add, in its place, the text ''IEC 60092–303''.

**§ 111.25–5 [Amended]**

■ 145. In § 111.25–5(a), remove the text ''IEC 92–301'' and add, in its place, ''IEC 60092–301''.

**§ 111.30–5 [Amended]**

■ 146. In § 111.30–5(a)(2), remove the text ''IEC 92–503'' and add, in its place, the text ''IEC 60092–503''.

**§ 111.30–19 [Amended]**

■ 147. In § 111.30–19(b)(4), remove the text ''IEC 332–1'' and add, in its place, the text ''IEC 60332–1''.

**§ 111.33–3 [Amended]**

■ 148. In § 111.33–3(a)(2), remove the text ''IEC 92–304'' and add, in its place, the text ''IEC 60092–304''.

**§ 111.33–5 [Amended]**

■ 149. In § 111.33–5(b), remove the text ''IEC 92–304'' and add, in its place, the text ''IEC 60092–304''.

**§ 111.50–3 [Amended]**

■ 150. In § 111.50–3(c), (e), and (g)(2), remove the text ''IEC 92–202'' and add, in its place, the text ''IEC 60092–202''.

**§ 111.53–1 [Amended]**

■ 151. In § 111.53–1(a)(1), remove the text ''IEC 92–202'' and add, in its place, the text ''IEC 60092–202''.

**§ 111.54–1 [Amended]**

■ XX. In § 111.54–1(a)(1), remove the text ''IEC 92–202'' and add, in its place, the text ''IEC 60092–202''.

**§ 111.60–1 [Amended]**

■ 152. In § 111.60–1(a) and (b), remove the text ''IEC 92–353'' and add, in its place, the text ''IEC 60092–353''.

**§ 111.60–3 [Amended]**

■ 153. In § 111.60–3(a)(2), (a)(3), and (b)(2), remove the text ''IEC 92–353'' and add, in its place, the text ''IEC 60092–353''.

**§ 111.60–5 [Amended]**

■ 154. In § 111.60–5(a)(2), remove the text ''IEC 92–353'' and add, in its place, the text ''IEC 60092–353''.

**§ 111.70–1 [Amended]**

■ 155. In § 111.70–1(a), remove the text ''IEC 92–301'' and add, in its place, the text ''IEC 60092–301''.

**§ 111.70–3 [Amended]**

■ 156. In § 111.70–3(a), remove the text ''IEC 92–201'' and add, in its place, the text ''IEC 60092–201''.

**§ 111.75–20 [Amended]**

■ 157. In § 111.75–20(a) and (e), remove the text ''IEC 92–306'' and add, in its place, the text ''IEC 60092–306''.

**§ 111.81–1 [Amended]**

■ 158. In § 111.81–1(d), remove the text ''IEC 92–201; IEC 92–306'' and add, in its place, the text ''IEC 60092–201; IEC 60092–306''; and remove the text ''IEC 92–401'' and add, in its place, the text ''60092–401''.

**§ 111.105–1 [Amended]**

■ 159. In § 111.105–1, remove the text ''IEC 79–6'' and add, in its place, the text ''IEC 60079–6''; and remove the text ''IEC 79–18'' and add, in its place, the text ''IEC 60079–18''.

**§ 111.105–15 [Amended]**

■ 160. In § 111.105–15(e), remove the text ''IEC 79–18'' and add, in its place, the text ''IEC 60079–18''.

## PART 114—GENERAL PROVISIONS

■ 161. The authority citation for part 114 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

**§ 114.600 [Amended]**

■ 162. In § 114.600(a) following the text ''on file at'', remove the text ''the U.S. Coast Guard, Office of Operating and Environmental Standards (CG–OES), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 or'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available''.

## PART 115—INSPECTION AND CERTIFICATION

■ 163. The authority citation for part 115 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 115.675 [Amended]**

■ 164. In § 115.675, remove the text ''§ 115.605'' and add, in its place, the text ''§ 115.600''.

## PART 116—CONSTRUCTION AND ARRANGEMENT

■ 165. The authority citation for part 116 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277, Department of Homeland Security Delegation No. 0170.1.

■ 166. In § 116.202, revise paragraph (a) introductory text to read as follows:

**§ 116.202 Plans and information required.**

(a) Except as provided in § 116.210 of this part, the owner of a vessel requesting initial inspection for certification must, prior to the start of construction, submit for approval three copies of the following plans. The plans may be delivered by visitors to the Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or transmitted by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410, in a

written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC*.

* * * * *

## PART 125—GENERAL

■ 167. The authority citation for part 125 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1.

### § 125.180 [Amended]

■ 168. In § 125.180(a) following the text ''inspection at the'', remove the text ''U.S. Coast Guard, Office of Operating and Environmental Standards, (CG–OES) 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, or'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available''.

## PART 126—INSPECTION AND CERTIFICATION

■ 169. The authority citation for part 126 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307, 3702, 14104; 46 U.S.C. Chapter 701; Executive Order 11735, 38 FR 21243; 3 CFR 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

### § 126.235 [Amended]

■ 170. In § 126.235(b) following the text ''is available from'', remove the text ''Commandant (CG–ENG–2), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126; telephone (202) 372–1372; or fax (202) 372–1925'' and add, in its place, the text ''at Coast Guard Headquarters. Contact Commandant (CG–ENG–2), Attn: Naval Architecture Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1372 or fax 202–372–1925''.

## PART 127—CONSTRUCTION AND ARRANGEMENTS

■ 171. The authority citation for part 127 continues to read as follows:

**Authority:** 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

### § 127.120 [Amended]

■ 172. In § 127.120(b), remove the text ''U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or by mail to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 147—HAZARDOUS SHIPS' STORES

■ 173. The authority citation for part 147 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 174. Revise § 147.5 to read as follows:

### § 147.5 Commandant (CG–OES); address.

Commandant (CG–ENG) is the Office of Design and Engineering Standards. The mailing address is Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1372.

### § 147.7 [Amended]

■ 175. In § 147.7(a), following the text ''inspection at the'', remove the text ''the Coast Guard, Office of Operating and Environmental Standards (CG–OES), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

### § 147.9 [Amended]

■ 176. In § 147.9(a), remove the text ''Commandant (CG–OES)'' and add, in its place, the text ''Commandant (CG–ENG)''.

### § 147.40 [Amended]

■ 177. In § 147.40(a), (b), and (c), remove the text ''Commandant (CG–OES)'' and add, in its place, the text ''Commandant (CG–ENG)''.

### § 147.60 [Amended]

■ 178. In § 147.60(c)(2), remove the text ''Commandant (CG–OES)'' and add, in its place, the text ''Commandant (CG–ENG)''.

■ 179. In § 147.95, revise paragraphs (a) and (b)(2) to read as follows:

### § 147.95 Explosives.

(a) *Explosives—general.* Except as provided for elsewhere in this subchapter, explosives, as defined in 49 CFR 173.50, which are hazardous ships' stores must be stowed in accordance with 49 CFR 176.116 through 176.138.

(b) * * *

(2) All small arms ammunition must be stowed and locked in a metal closed cargo transport unit for Class 1 (explosive) materials as defined in 49 CFR 176.2. The key to the cargo transport unit must be kept in the possession of the master or a person designated by the master.

* * * * *

## PART 148—CARRIAGE OF BULK SOLID MATERIALS THAT REQUIRE SPECIAL HANDLING

■ 180. The authority citation for part 148 continues to read as follows:

**Authority:** 33 U.S.C. 1602; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 46 U.S.C. 3306, 5111; 49 U.S.C. 5103; Department of Homeland Security Delegation No. 0170.1.

■ 181. In § 148.3, revise the definition of ''*Commandant (CG–ENG–5)*'' to read as follows:

### § 148.3 Definitions.

* * * * *

*Commandant (CG–ENG–5)* means the Chief, Hazardous Materials Division of the Office of Design and Engineering Systems. The mailing address is: Commandant (CG–ENG–5), Attn: Hazardous Materials Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1420 or email *hazmatstandards@uscg.mil*.

* * * * *

### § 148.8 [Amended]

■ 182. In § 148.8(a) following the text ''inspection at the'', remove the text ''U.S. Coast Guard Hazardous Materials Division (CG–ENG–5), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''at Coast Guard Headquarters. Contact Commandant (CG–ENG–5), Attn: Hazardous Materials Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the sources listed in paragraphs (b) and (c) of this section''.

### § 148.115 [Amended]

■ 183. In § 148.115(b), following the text ''be sent to the'', remove the text

''Commandant (CG–ENG–5), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG–5), Attn: Hazardous Materials Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 150—COMPATIBILITY OF CARGOES

■ 184. The authority citation for part 150 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1. Section 150.105 issued under 44 U.S.C. 3507; Department of Homeland Security Delegation No. 0170.1.

■ 185. Revise note 1 for Table I to Part 150 to read as follows:

**Table I to Part 150—Alphabetical List of Cargoes**

* * * * *

1. Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this commodity is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (CG–ENG–5), Attn: Hazardous Materials Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. Telephone 202–372–1420 or email *hazmatstandards@uscg.mil.*

* * * * *

■ 186. Revise note 1 for Table II to Part 150 to read as follows:

**Table II to Part 150—Grouping of Cargoes**

* * * * *

1. Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (CG–ENG–5), Attn: Hazardous Materials Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. Telephone 202–372–1420 or email *hazmatstandards@uscg.mil.*

* * * * *

■ 186. In Appendix III to Part 150, revise the fourth paragraph in *Step 3* to read as follows:

**Appendix III to Part 150—Testing Procedures for Determining Exceptions to the Chart**

* * * * *

Step 3

* * * * *

Send a copy of the Data Sheet for each binary chemical mixture tested to: Commandant (CG–ENG–5), Attn: Hazardous Materials Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

## PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

■ 187. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1.

### § 151.03–31 [Amended]

■ 188. In § 151.03–31, remove the text ''The Office of the Commandant, U.S. Coast Guard, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–5P), Attn: Assistant Commandant for Prevention, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501''.

## PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

■ 189. The authority citation for part 153 continues to read as follows:

**Authority:** 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903 (b).

■ 190. In § 153.2, revise the section heading and the definition of ''*Commandant*'' to read as follows:

### § 153.2 Definitions and acronyms.

* * * * *

*Commandant* means Commandant (staff symbol), Attn: (Staff title), U.S. Coast Guard Stop (mailing code) 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–(mailing code)''.

* * * * *

### § 153.4 [Amended]

■ 191. In § 153.4(a), following the text ''file at'', remove the text ''the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, or at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; or contact''.

### § 153.9 [Amended]

■ 192. In 153.9(b), following the text ''electronic format, to'', remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 154—SAFETY STANDARDS FOR SELF–PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

■ 193. The authority citation for part 154 continues to read as follows:

**Authority:** 46 U.S.C. 3703, 9101; Department of Homeland Security Delegation No. 0170.1.

### § 154.1 [Amended]

■ 194. In § 154.1(a), following the text ''on file at the'', remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, or at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; or contact''.

### § 154.22 [Amended]

■ 195. In § 154.22(a), following the text ''must submit to the'', remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

### § 154.34 [Amended]

■ 196. In § 154.34, remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 154.151 [Amended]

■ 197. In § 154.151(c), following the text ''plan review under'', remove the text ''§ 154.5(b)'' and add, in its place, the text ''§ 154.22(b)''; and following the

text ''Marine Safety Center'', remove the text ''fourteen'' and add, in its place, the text ''14''.

## PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

■ 198. The authority citation for part 159 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 159.001–9 also issued under the authority of 44 U.S.C. 3507.

### § 159.001–4 [Amended]

■ 199. In § 159.001–4(a), remove the text ''U.S. Coast Guard, Life Saving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

### § 159.001–5 [Amended]

■ 200. In § 159.001–5, remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, Telephone: (202) 372–1392, Facsimile: (202) 372–1924'' and add, in its place, the text ''Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924''.

## PART 160—LIFESAVING EQUIPMENT

■ 201. The authority citation for part 160 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; and Department of Homeland Security Delegation No. 0170.1.

### § 160.002–1 [Amended]

■ 202. In § 160.002–1(c), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa., 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*.''.

### § 160.005–1 [Amended]

■ 203. In 160.005–1(c), remove the text ''Commandant, U.S. Coast Guard'' and add, in its place, the text ''Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and following the text ''obtained from the'', remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

### § 160.010–1 [Amended]

■ 204. In § 160.010–1(a), remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 205. In § 160.010–2, revise the definition of ''*Commandant*'' to read as follows:

### § 160.010–2 Definitions.

* * * * *

*Commandant* means the Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

* * * * *

### § 160.013–1 [Amended]

■ 206. In § 160.013–1(c), following the text ''request from the'', remove the text ''Commandant, U.S. Coast Guard'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 160.016–5 [Amended]

■ 207. In § 160.016–5(a), remove the text ''Commandant, United States Coast Guard, Washington, DC 20226'' and add, in its place, the text ''Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 160.022–1 [Amended]

■ 208. In § 160.022–1(c), remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 160.023–1 [Amended]

■ 209. In § 160.023–1(b), remove the text ''Customer Service, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120 (tel: (215) 697–2000)'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

### § 160.026–1 [Amended]

■ 210. In § 160.026–1(b), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa., 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

### § 160.031–1 [Amended]

■ 211. In § 160.031–1(b), remove the text ''Customer Service, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120 (tel: (215) 697–2000)'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

### § 160.037–1 [Amended]

■ 212. In § 160.037–1(c), remove the text ''from the Commandant (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''from Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 160.040–1 [Amended]

■ 213. In § 160.040–1(b), remove the text ''Customer Service, Naval

Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120 (tel: (215) 697–2000)'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.047–1 [Amended]**

■ 214. Amend § 160.047–1 as follows:
■ a. In paragraph (c)(1), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and
■ b. In paragraph (c)(3), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, PA 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.048–1 [Amended]**

■ 215. In § 160.048–1(c), remove the text ''the Commandant, U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, PA 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.049–1 [Amended]**

■ 216. In § 160.049–1(c), following the text ''upon request from'', remove the text ''the Commandant, U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 217. In § 160.051–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.051–3 Definitions.**

* * * * *

*Commandant* means Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

* * * * *

**§ 160.051–5 [Amended]**

■ 218. In § 160.051–5(a), remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 160.052–1 [Amended]**

■ 219. Amend § 160.052–1 as follows:
■ a. In paragraph (c)(1), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and
■ b. In paragraph (c)(3), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, PA 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.053–1 [Amended]**

■ 220. In § 160.053–1(b), remove the text ''Business Service Center, General Services Administration, Washington, DC 20407'' and add, in its place, the text ''General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 2200 Crystal Drive, 11th Floor, Arlington, VA 22202, 703–605–5400''; and remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.054–1 [Amended]**

■ 221. In § 160.054–1(b), remove the text ''the Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text, ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 222. Revise § 160.055–1(c) to read as follows:

**§ 160.055–1 Incorporation by reference.**

* * * * *

(c) *Copies on file.* Copies of the specifications, standards, and plans referred to in this section shall be kept on file by the manufacturer, together with the approved plans and certificate of approval. The Coast Guard Specification and plans may be obtained upon request from the Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The Federal standards may be obtained from the General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 2200 Crystal Drive, 11th Floor, Arlington, VA 22202; telephone 703–605–5400. The Military Specifications may be obtained from the Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*.

The ASTM Standards may be purchased from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone 877–909–2786 or Web site *http://www.astm.org.*

**§ 160.057–1 [Amended]**

■ 223. In § 160.057–1(c), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 160.058–1 [Amended]**

■ 224. In § 160.058–1(b), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa., 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.060–1 [Amended]**

■ 225. Amend § 160.060–1 as follows:
■ a. In paragraph (c)(1), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509'';
■ b. In paragraph (c)(2), remove the text ''Business Service Center, General Services Administration, Washington, DC, 20407'' and add, in its place, the text ''Business Service Center, General Services Administration, Washington, DC 20407''; and
■ c. In paragraph (c)(3), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa., 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.061–1 [Amended]**

■ 226. Amend § 160.061–1 as follows:
■ a. In paragraph (b)(1), remove the text ''Business Service Center, General Services Administration, Washington, DC 20407'' and add, in its place, the text ''General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 2200 Crystal Drive, 11th Floor, Arlington, VA 22202; telephone 703–605–5400''; and
■ b. In paragraph (b)(2), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

**§ 160.062–1 [Amended]**

■ 227. Amend § 160.062–1 as follows:
■ a. In paragraph (c)(1), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''; and
■ b. In paragraph (c)(2), remove the text ''Business Service Center, General Services Administration, Washington, DC 20407'' and add, in its place, the text ''General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 2200 Crystal Drive, 11th Floor, Arlington, VA 22202; telephone 703–605–5400''.

**§ 160.072–09 [Amended]**

■ 228. In § 160.072–09(a), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 160.073–5 [Amended]**

■ 229. In § 160.073–5(b), following the text ''requesting the listing to'', remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.
■ 230. In § 160.076–5, revise the definition of ''*Commandant''* to read as follows:

**§ 160.076–5 Definitions.**

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

**§ 160.076–11 [Amended]**

■ 231. In § 160.076–11(a), following the text ''(NARA) and at'', remove the text ''the U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is''.

**§ 160.077–2 [Amended]**

■ 232. In § 160.077–2(a), remove the text ''the Chief of the Lifesaving and Fire Safety Division, Life Saving and Fire Safety Division. Address: Commandant (CG–ENG–4), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924''.

**§ 160.077–5 [Amended]**

■ 233. In § 160.077–5(a), following the text ''is on file at the'' remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 or at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. You may also contact''.

■ 234. In § 160.115–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.115–3 Definitions.**

* * * * *

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

**§ 160.115–5 [Amended]**

■ 235. In § 160.115–5(a), following the text ''for inspection at'', remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 236. In § 160.132–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.132–3 Definitions.**

* * * * *

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

**§ 160.132–5 [Amended]**

■ 237. In § 160.132–5(a), following the text ''for inspection at'', remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 238. In § 160.133–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.133–3 Definitions.**

* * * * *

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

**§ 160.133–5 [Amended]**

■ 239. In § 160.133–5(a), following the words ''available for inspection at'', remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 240. In § 160.135–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.135–3 Definitions.**

* * * * *

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

■ 241. In § 160.151–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.151–3 Definitions.**

* * * * *

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

**§ 160.151–5 [Amended]**

■ 242. In § 160.151–5(a) following the text ''for inspection at'', remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 243. In § 160.156–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.156–3 Definitions.**

* * * * *

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

**§ 160.156–5 [Amended]**

■ 244. In § 160.156–5(a), following the text ''available for inspection at'', remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 245. In § 160.170–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 160.170–3 Definitions.**

* * * * *

*Commandant* means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924.

* * * * *

**§ 160.170–5 [Amended]**

■ 246. In § 160.170–5(a) following the text ''available for inspection at'', remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 160.171–3 [Amended]**

■ 247. In § 160.171–3(a) following the text ''20408, and at'', remove the text ''the U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 160.174–3 [Amended]**

■ 248. In § 160.174–3(a) following the text ''20408, and at'', remove the text ''the U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 160.176–3 [Amended]**

■ 249. In § 160.176–3(a) in the definition of ''*Commandant*'', remove the text ''Chief of the Lifesaving and Fire Safety Division, Life Saving and Fire Safety Division. Address: Commandant (CG–ENG–4), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant means the Chief of the Lifesaving and Fire Safety Standards Division. Address: Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392 or fax 202–372–1924''.

**§ 160.176–4 [Amended]**

■ 250. In § 160.176–4(a) following the text ''is on file at'', remove the text ''the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 or'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–

7509. You may also inspect this material''.

## PART 161—ELECTRICAL EQUIPMENT

■ 251. The authority citation for part 161 continues to read as follows:

*Authority:* 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 161.002–1 [Amended]

■ 252. Amend § 161.002–1 as follows:

■ a. In paragraph (a) following the text ''(NARA), and at'', remove the text ''the U.S. Coast Guard, (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''; and

■ b. In paragraph (b), following the text ''*International Electrotechnical Commission, 1, Rue de Varembe, Geneva, Switzerland*'', remove the text ''IEC 533'' and add, in its place, the text ''IEC 60533''.

### § 161.002–18 [Amended]

■ 253. In § 161.002–18(a), remove the text ''Commandant (CG–ENG), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 161.006–6 [Amended]

■ 254. In § 161.006–6(a), remove the text ''Commandant, United States Coast Guard, Washington, DC, 20226'' and add, in its place, the text ''Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 161.010–1 [Amended]

■ 255. In § 161.010–1(a) following the text ''(NARA), and at'', remove the text ''the Commanding Officer, USCG Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024'' and add, in its place, the text ''Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203''.

■ 256. In § 161.010–4, revise paragraph (a) to read as follows:

### § 161.010–4 Procedure for approval.

(a) A request for approval of an automatic floating electric waterlight must be submitted by visitors to the Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or transmitted by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC.*

* * * * *

### § 161.012–5 [Amended]

■ 257. In § 161.012–5(a), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 161.013–11 [Amended]

■ 258. In § 161.013–11(c)(1), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

### § 161.013–17 [Amended]

■ 259. In § 161.013–17, following the text ''written notice to the'', remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 162—ENGINEERING EQUIPMENT

■ 260. The authority citation for part 162 continues to read as follows:

*Authority:* 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

### § 162.017–1 [Amended]

■ 261. In § 162.017–1(b) following the text ''inspection at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the source listed in paragraph (c) of this section''.

### § 162.017–6 [Amended]

■ 262. In § 162.017–6(a) following the text ''visitors to the'', remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or transmitted by mail to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or transmitted by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

### § 162.018–8 [Amended]

■ 263. In § 162.018–8(a) following the text ''visitors to the'', remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or transmitted by mail to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or transmitted by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

### § 162.027–1 [Amended]

■ 264. In § 162.027–1(a) following the text ''and Records Administration'', remove the text ''(NARA and at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126 and is'' and add, in its place the text ''(NARA) and at Coast Guard Headquarters. Contact

Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

**§ 162.050–4 [Amended]**

■ 265. In § 162.050–4(a), following the text ''available for inspection at'', remove the text ''the Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 266. In § 162.050–7, paragraph (a) to read as follows:

**§ 162.050–7 Approval procedures.**

(a) An application for approval of equipment under this subpart must either be delivered by visitors to the Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or transmitted by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC.*

* * * * *

**§ 162.050–15 [Amended]**

■ 267. Amend § 162.050–15 as follows:

■ a. In paragraph (a), remove the text ''Commandant (CG–ENG–3), Systems Engineering Division, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG–3), Attn: Systems Engineering Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and

■ b. In paragraph (h), remove the text ''Commandant (CG–ENG–3), Systems Engineering Division, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG–3), Attn: Systems Engineering Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 162.060–5 [Amended]**

■ 268. In § 162.060–5(a) following the text ''for inspection from the'', remove the text ''Director of Commercial Regulations and Standards (CG–5PS), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''at Coast Guard Headquarters. Contact Commandant (CG–5PS), Attn: Director of Commercial Regulations, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also from the sources listed in paragraphs (b) through (d) of this section''.

**§ 162.060–10 [Amended]**

■ 269. Amend § 162.060–10 as follows:

■ a. In paragraph (a), following the text ''as possible to the'', remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center (MSC), 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''; and

■ b. In paragraph (b)(1), following the text ''written request to the'', remove the text ''Commanding Officer, U.S. Coast Guard MSC, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

**§ 162.060–14 [Amended]**

■ 270. In § 162.060–14(b), remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

**§ 162.060–16 [Amended]**

■ 271. In § 162.060–16(c), following the text ''this determination to the'', remove the text ''Director of Commercial Regulations and Standards (CG–5PS), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Director of Commercial Regulations. Contact Commandant (CG–5PS), Attn: Director of Commercial Regulations, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 162.060–40 [Amended]**

■ 272. Amend § 162.060–40 as follows:

■ a. In paragraph (b), remove the text ''Commandant (CG–ENG), Office of Design and Engineering Standards, U.S. Coast Guard, 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and

■ b. In paragraph (c), remove the text ''Commandant (CG–ENG), Office of Design and Engineering Standards, U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 162.060–42 [Amended]**

■ 273. Amend § 162.060–42 as follows:

■ a. In paragraph (a)(3), remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''; and

■ b. In paragraph (g), remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

**§ 162.161–2 [Amended]**

■ 274. In § 162.161–2(a) following the text ''available for inspection at'', remove the text ''U.S. Coast Guard, Office of Operating and Environmental Standards (CG–OES), 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 164—MATERIALS

■ 275. The authority citation for part 164 continues to read as follows:

*Authority:* 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 164.007–1 [Amended]**

■ 276. In § 164.007–1(c)(1), remove the text ''Commandant (CG–ENG), U.S.

Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 164.008–1 [Amended]**

■ 277. In § 164.008–1(c)(1), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 164.009–9 [Amended]**

■ 278. In § 164.009–9(a), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 164.012–1 [Amended]**

■ 279. In § 164.012–1(b), following the text ''upon request from the'', remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126. The American Society for Testing Materials Standards may be purchased from that society at 100 Barr Harbor Drive'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. ASTM International's standards may be purchased from that organization at 100 Barr Harbor Drive, P.O. Box C700''.

**§ 164.013–2 [Amended]**

■ 280. In § 164.013–2(a), following the text ''(NARA), and at the'', remove the text ''U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

**§ 164.015–1 [Amended]**

■ 281. Amend § 164.015–1 as follows:

■ a. In paragraph (b)(1), remove the text ''Business Service Center, General Services Administration, Washington, DC, 20407'' and add, in its place, the text ''General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 2200 Crystal Drive, 11th Floor, Arlington, VA 22202; telephone 703–605–5400''; and

■ b. In paragraph (b)(2), remove the text ''Commanding Officer, Naval Supply Depot, 5801 Tabor Avenue, Philadelphia, Pa. 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/*''.

■ 282. Revise § 164.018–5(b) to read as follows:

**§ 164.018–5 Specifications and standards incorporated by reference.**

* * * * *

(b) The Federal standards may be obtained from the General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 2200 Crystal Drive, 11th Floor, Arlington, VA 22202; telephone 703–605–5400. The Military Specifications may be obtained from the Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/.*'' These materials are also on file in the **Federal Register** library.

* * * * *

**§ 164.018–7 [Amended]**

■ 283. In § 164.018–7(a), remove the text ''Commandant (CG–ENG), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

**§ 164.019–3 [Amended]**

■ 284. Amend § 164.019–3 as follows:

■ a. In the definition of ''*Commandant*'', remove the text ''Commandant (CG–ENG), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126. Telephone: 202 372–1392'' and add, in its place, the text ''Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1392''; and

■ b. In the definition of ''*Use Code*'', remove the text ''Commandant (G–MSE)'' and add, in its place, the text ''Commandant (CG–ENG–4)''.

■ 285. Amend § 164.023–3 as follows:

■ a. In paragraph (a), following the text ''(NARA), and at'' remove the text ''the U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the source'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the sources''; and

■ b. Revise paragraph (c).

The revision reads as follows:

**§ 164.023–3 Specifications and standards incorporated by reference.**

* * * * *

(c) The Federal standards may be obtained from the General Services Administration, Federal Acquisition Service, Office of the FAS Commissioner, 2200 Crystal Drive, 11th Floor, Arlington, VA 22202; 703–605–5400. Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/.*

■ 286. In § 164.120–3, revise the definition of ''*Commandant*'' to read as follows:

**§ 164.120–3 Definitions.**

* * * * *

*Commandant* means Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

* * * * *

**§ 164.120–5 [Amended]**

■ 287. In § 164.120–5(a), following the text ''available for inspection at'', remove the text ''Commandant (CG–ENG–4), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 169—SAILING SCHOOL VESSELS

■ 288. The authority citation for part 169 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

■ 289. In § 169.107, revise the definition of ''*Headquarters''* to read as follows:

### § 169.107 Definitions.

* * * * *

*Headquarters* means the Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509.

* * * * *

### § 169.115 [Amended]

■ 290. Amend § 169.115 as follows:

■ a. In paragraph (b), following the text ''DC 20408 and at'', remove the text ''the U.S. Coast Guard, Office of Design and Engineering Standards, (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509'';

■ b. In paragraph (c)(1), following the text ''Yacht Council (ABYC),'' remove the text ''3069 Solomons Island Road, Edgewater, MD 21037'' and add, in its place, the text ''613 Third Street Suite 10, Annapolis, MD 21403''; and

■ c. In paragraph (c)(4), remove the text ''Naval Publications and Forms Center, Customer Service Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/''.*

## PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

■ 291. The authority citation for part 170 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 170.010 [Amended]

■ 292. In § 170.010, remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'', and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410,''.

### § 170.015 [Amended]

■ 293. Amend § 170.015 as follows:

■ a. In paragraph (a), following the text ''for inspection at'', remove the text ''the Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''; and

■ b. In paragraph (c), remove the text ''Naval Publications and Forms Center, Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120'' and add, in its place, the text ''Military Specifications and Standards, Standardization Documents Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, *https://assist.daps.dla.mil/quicksearch/''.*

### § 170.090 [Amended]

■ 294. In § 170.090(g) following the text ''file at the'', remove the text ''U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington DC 20593–7126'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–2), Attn: Naval Architecture Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

■ 295. Revise § 170.100(b) to read as follows:

### § 170.100 Addresses for submittal of plans and calculations.

* * * * *

(b) By visitors to the Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410, in a written or electronic format. Information for submitting the VSP electronically can be found at *http://www.uscg.mil/HQ/MSC.''.*

## PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

■ 296. The authority citation for part 171 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 297. In § 171.012(a) following the text ''available for inspection at the'' remove the text ''Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–ENG–2), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–2), Attn: Naval Architecture Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the source listed in paragraph (b) of this section''.

## PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

■ 298. The authority citation for part 172 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 172.020 [Amended]

■ 299. In § 172.020(a), following the text ''for inspection at'', remove the text ''the Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–ENG–2), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–2), Attn: Naval Architecture Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the source listed in paragraph (b) of this section''.

## PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

■ 300. The authority citation for part 174 continues to read as follows:

**Authority:** 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 174.007 [Amended]**

■ 301. In § 174.007(a), following the text ''for inspection at'', remove the text ''the Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–ENG–2), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–2), Attn: Naval Architecture Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also from the sources listed in paragraphs (b) and (c) of this section''.

## PART 175—GENERAL PROVISIONS

■ 302. The authority citation for part 175 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 175.900 also issued under 44 U.S.C. 3507.

**§ 175.600 [Amended]**

■ 303. § 175.600(a) following the text ''for inspection at'', remove the text ''the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the sources listed in ''Table 175.600: Subchapter T Incorporations by Reference'' in this section.

## PART 176—INSPECTION AND CERTIFICATION

■ 304. The authority citation for part 176 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 176.675 [Amended]**

■ 305. In § 176.675, remove the text ''§ 176.605'' and add, in its place, the text ''§ 176.600''.

## PART 177—CONSTRUCTION AND ARRANGEMENT

■ 306. The authority citation for part 177 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 177.202 [Amended]**

■ 307. In § 177.202(d), remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St., SW., Stop 7102, Washington, DC 20593–7102'', and add, in its place, the text ''Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

**§ 177.410 [Amended]**

■ 308. In § 177.410(b)(5), following the text ''visitors to the'', remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or transmitted by mail to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 179—SUBDIVISION, DAMAGE STABILITY, AND WATERTIGHT INTEGRITY

■ 309. The authority citation for part 179 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 179.15 [Amended]**

■ 310. In § 179.15(a) following the text ''It is available for inspection at'', remove the text ''the Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–ENG–2), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–2), Attn: Naval Architecture Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also''.

## PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

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

**Authority:** 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 180.137 [Amended]**

■ 312. Amend § 180.137 as follows:

■ a. In paragraph (e)(3), remove the text ''§ 180.175(e)(3)(ii),'' and add, in its place, the text § 180.175(f)(3)(ii),''; and

■ b. In paragraph (e)(4), remove the text ''§ 180.175(e)(3)(ii)'' and add, in its place the text ''§ 180.175(f)(3)(ii)''.

## PART 188—GENERAL PROVISIONS

■ 313. The authority citation for part 188 continues to read as follows:

**Authority:** 46 U.S.C. 2113, 3306; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 188.10–33 [Amended]**

■ 314. In § 188.10–33, remove the text ''Office of the Commandant, U.S. Coast Guard, 2100 2nd St. SW., Stop 7000, Washington, DC 20593–7000'' and add, in its place the text ''Commandant (CG–00), Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7000''.

**§ 188.35–5 [Amended]**

■ 315. In § 188.35–5(b), remove the text ''the Office of the Commandant (CG–CVC), U.S. Coast Guard, 2100 2nd St. SW., Stop 7581, Washington, DC 20593–7581, or,'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–CVC), Attn: Office of Commercial Vessel Compliance, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7501. The standards are also available''.

## PART 189—INSPECTION AND CERTIFICATION

■ 316. The authority citation for part 189 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

**§ 189.15–5 [Amended]**

■ 317. In § 189.15–5(b) following the text ''supplements, is available from'', remove the text ''Commandant (CG–ENG), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126; telephone (202) 372–1371; or fax (202) 372–1925'' and add, in its place, the text ''Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin

Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1371 or fax 202–372–1925''.

**§ 189.55–15 [Amended]**

■ 318. In § 189.55–15(a)(2), remove the text ''Commanding Officer, U.S. Coast Guard Marine Safety Center, 1900 Half Street SW., Suite 1000, Room 525, Washington, DC 20024, or transmitted by mail to: Commanding Officer, U.S. Coast Guard Marine Safety Center, 2100 2nd St. SW., Stop 7102, Washington, DC 20593–7102'' and add, in its place, the text ''Commanding Officer, Marine Safety Center, U.S. Coast Guard, 4200 Wilson Boulevard Suite 400, Arlington, VA 22203, or transmitted by mail to: Commanding Officer (MSC), Attn: Marine Safety Center, U.S. Coast Guard Stop 7410, 4200 Wilson Boulevard Suite 400, Arlington, VA 20598–7410''.

## PART 193—FIRE PROTECTION EQUIPMENT

■ 319. The authority citation for part 193 continues to read as follows:

**Authority:** 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 193.01–3 [Amended]**

■ 320. In § 193.01–3(a) following the text ''it is available for inspection at'', remove the text ''the Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, 202–372–1405, and is'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509; telephone 202–372–1405. The material is also''.

## PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 321. The authority citation for part 195 continues to read as follows:

*Authority:* 46 U.S.C. 2113, 3306, 3307; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 195.01–3 [Amended]**

■ 322. In § 195.01–3(a) following the text ''20408, and at'', remove the text ''the U.S. Coast Guard, Office of Design and Engineering Standards, (CG–ENG), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, and is available from the address'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG), Attn: Office of Design and Engineering Systems, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. The material is also available from the source''.

## PART 197—GENERAL PROVISIONS

■ 323. The authority citation for part 197 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; Department of Homeland Security Delegation No. 0170.1.

**§ 197.510 [Amended]**

■ 324. In § 195.510(a) following the text ''material is on file at'', remove the text ''U.S. Coast Guard, Office of Operating and Environmental Standards (CG–OES), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126 and at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. You may also contact''.

## PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

■ 325. The authority citation for part 199 is revised to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

**§ 199.05 [Amended]**

■ 326. In § 199.05(a) following the text ''is available for inspection at'' remove the text ''the U.S. Coast Guard, Lifesaving and Fire Safety Standards Division (CG–ENG–4) 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126, and at'' and add, in its place, the text ''Coast Guard Headquarters. Contact Commandant (CG–ENG–4), Attn: Lifesaving and Fire Safety Division, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509. You may also contact''.

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 327. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

**§ 401.110 [Amended]**

■ 328. Amend § 401.110 as follows:

■ a. In paragraph (a)(2), remove the text ''Commandant, U.S. Coast Guard, 2100 2nd St. SW., Stop 7000, Washington, DC 20593–7000'' and add, in its place, the text ''Commandant (CG–00), Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7000'';

■ b. In paragraph (a)(9) following the text ''to the following address:'', remove the text ''Commandant (CG–WWM–2), Attn: Director, Great Lakes Pilotage, U.S. Coast Guard, 2100 2nd St. SW., Stop 7581, Washington, DC 20593–7581, Attn: Director, Great Lakes Pilotage'' and add, in its place, the text ''Commandant (CG–WWM–2), Attn: Great Lakes Pilotage Branch, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and

■ c. In paragraph (a)(16), remove the word ''Division'' and add, in its place, the word ''Branch''.

# Title 49

## PART 7—PUBLIC AVAILABILITY OF INFORMATION

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

**Authority:** 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

**§ 7.15 [Amended]**

■ 330. In § 7.15(c), remove the text ''United States Coast Guard, 2100 2nd Street SW., Room 6106, Washington, DC 20593–0001'' and add, in its place, the text ''Commandant (CG–00), Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7000''.

## PART 450—GENERAL

■ 331. The authority citation for part 450 continues to read as follows:

**Authority:** 46 U.S.C. 80503; Department of Homeland Security Delegation No. 0170.1.

**§ 450.11 [Amended]**

■ 332. In § 450.11(a), remove the text ''Commandant, (CG–OES), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''; and following the text ''from the Commandant'', remove the

text ''(CG–522)'' and add, in its place, the text ''(CG–OES)''.

## PART 451—TESTING AND APPROVAL OF CONTAINERS

■ 333. The authority citation for part 451 continues to read as follows:

**Authority:** 46 U.S.C. 80503; Department of Homeland Security Delegation No. 0170.1.

### § 451.1 [Amended]

■ 334. In § 451.1(a), remove the text ''Commandant (CG–OES), U.S. Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

## PART 452—EXAMINATION OF CONTAINERS

■ 335. The authority citation for part 452 continues to read as follows:

**Authority:** 46 U.S.C. 80503; Department of Homeland Security Delegation No. 0170.1.

### § 452.7 [Amended]

■ 336. In § 452.7(a), following the text ''for approval to the'', remove the text ''Commandant (CG–OES), United States Coast Guard, 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126'' and add, in its place, the text ''Commandant (CG–OES), Attn: Office of Operating and Environmental Standards, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7509''.

Dated: September 11, 2013.

**Kathryn A. Sinniger,**

*Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.*

[FR Doc. 2013–22624 Filed 9–27–13; 8:45 am]

BILLING CODE 9110–04–P

# FEDERAL REGISTER

Vol. 78 Monday,

No. 189 September 30, 2013


Part V

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Regulations; Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**[Docket FAR 2013–0076, Sequence 6]**

## Federal Acquisition Regulation; Federal Acquisition Circular 2005–70; Introduction

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of interim rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–70. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

**DATES:** For effective dates and comment dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–70 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE LISTED IN FAC 2005–70

| Item | Subject | FAR Case | Analyst |
|---|---|---|---|
| I | Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (Interim) | 2013–015 | Corrigan. |
| II | Allowability of Legal Costs for Whistleblower Proceedings (Interim) | 2013–017 | Chambers. |

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–70 amends the FAR as specified below:

### Item I—Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (FAR Case 2013–015)

This interim rule amends the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at subpart 3.9. In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in these rules in major modifications to contracts and orders awarded prior to the effective date of this interim rule. The pilot program is mandated by section 828, entitled ''Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,'' of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). This rule implements section 828 by amending FAR 3.900, Scope of subpart, to make FAR 3.901 through 3.906 inapplicable to DoD, NASA, and the Coast Guard and to prohibit the use of these sections for new awards by all other agencies subject to the FAR (title 41 agencies) through January 1, 2017. This rule creates a new FAR section 3.908 to be used by title 41 agencies through January 1, 2017. Other exceptions: FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, is unaffected by this rule. This rule does not provide any right not otherwise provided by law to disclose classified information, nor does it apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)(4)). In addition, the interim rule applies to actions over the simplified acquisition threshold.

### Item II—Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013–017)

This interim rule amends the FAR by revising the cost principle at 31.205–47 to implement sections 827(g) and 828(d) of the NDAA for FY 2013 (Pub. L. 112–239). There are two new whistleblower programs for contractor and subcontractor employees, at 10 U.S.C. 2409 and 41 U.S.C. 4712. The latter program is a pilot program, being addressed in FAR Case 2013–015, amending FAR subpart 3.9. The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. Because most contracts awarded to small businesses use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

Dated: September 24, 2013.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Federal Acquisition Circular (FAC) 2005–70 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–70 is effective September 30, 2013.

Dated: September 23, 2013.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: September 24, 2013.

**Houston Taylor,**

*Acting Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: September 23, 2013.

**William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2013–23704 Filed 9–27–13; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 3 and 52**

**[FAC 2005–70; FAR Case 2013–015; Item I; Docket 2013–0015, Sequence 1]**

**RIN 9000–AM56**

## Federal Acquisition Regulation; Pilot Program for Enhancement of Contractor Employee Whistleblower Protections

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a statutory pilot program enhancing whistleblower protections for contractor employees.

**DATES:** *Effective:* September 30, 2013.

*Applicability:* In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in these rules in major modifications to contracts and orders awarded prior to the effective date of this interim rule.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2013 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–70, FAR Case 2013–015, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''FAR Case 2013–015'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2013–015''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2013–015'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005–70, FAR Case 2013–015, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Corrigan, Procurement Analyst, at 202–208–1963, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–70, FAR Case 2013–015.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at FAR subpart 3.9. The pilot program is mandated by section 828, entitled ''Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,'' of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013).

Paragraph (a) of section 828 adds to title 41 a new section 4712 that contains the elements of the pilot program, which took effect by operation of law on July 1, 2013, and is effective through January 1, 2017. Paragraph (c) of section 828 suspends the pre-existing whistleblower protections in 41 U.S.C. 4705 ''(w)hile section 4712 of this title is in effect . . .'' (*i.e.,* from July 1, 2013, through January 1, 2017). Accordingly, this interim rule creates a new FAR section 3.908 to implement section 4712. The rule leaves intact FAR sections 3.901 through 3.906, which implement the pre-existing whistleblower protections in 41 U.S.C. 4705, but suspends their applicability during the period when the pilot is in effect. Absent Congressional action, these authorities will automatically be reinstated when the pilot authority sunsets.

The interim rule also clarifies that the pilot authority applies to title 41 agencies and is inapplicable to DoD, NASA, and the Coast Guard. The latter three agencies are covered by 10 U.S.C. 2409, which was amended by section 827 of the NDAA to impose permanent requirements very similar to the temporary requirements of the pilot program established in title 41.

Section 4712 and its implementing regulations (1) protect contractor or subcontractor employees against reprisal for activities protected by FAR 3.908–3(a) and (2) do not change any right or remedy otherwise available to the employee.

FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, is unaffected by this rule.

### II. Discussion and Analysis

FAR section 3.908, entitled ''Pilot program for enhancement of contractor employee whistleblower protections,'' is a self-contained complete implementation of the pilot program requirements in section 828 of the NDAA for FY 2013. FAR 3.908–1 spells out exemptions from the pilot for DoD, NASA, and the Coast Guard, as well as elements of the intelligence community in accordance with the requirements in 41 U.S.C. 4712(f)(1) and (2). FAR 3.908–2 includes the definitions of ''abuse of authority'' and ''Inspector General'' from paragraph (g) of 41 U.S.C. 4712, as added by section 828.

The specific prohibited actions that constitute reprisal and the entities to whom disclosing information constitutes whistleblowing as defined in 41 U.S.C. 4712 are similar to, but not exactly the same as, the current FAR contractor whistleblower coverage. These are addressed in the policy subsection, FAR 3.908–3. This subsection also clarifies what constitutes disclosure as that term is used in the law and the FAR coverage.

FAR subsections 3.908–4 and -5 include procedures for filing complaints and procedures for the Inspector General to investigate complaints. This coverage reflects paragraph (b) of 41 U.S.C. 4712.

The interim rule addresses remedies at FAR 3.908–6. The source material for this subsection is paragraphs (c)(1) through (3), and (c)(7) of 41 U.S.C. 4712. The law puts the remedies in the hands of the head of the agency and provides time lines for action. Under the law, the agency head may decide that the report of the Inspector General does not provide sufficient basis to conclude that the contractor employee has been subjected to reprisal. If, however, sufficient basis does exist, then the agency head must either issue an order denying relief or order the contractor to take one or more of the following actions:

(1) Take affirmative action to abate the reprisal.

(2) Reinstate the complainant-employee to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Pay the complainant-employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred for, or in connection with, bringing the complaint regarding the reprisal. The law also provides that complainants, after they are deemed to have exhausted all administrative remedies, may bring an action at law or equity against the contractor.

Paragraphs (c)(4) and (c)(5) of 41 U.S.C. 4712 address procedures for enforcement of the orders issued by the head of the agency. These paragraphs are implemented at FAR 3.908–7, and they require the agency head to file an action for enforcement in the U.S. district court if a person fails to comply with an order issued under section (c)(1) of 41 U.S.C. 4712, describe the types of relief that the court may grant, and allow the whistleblower complainant-employee to join in the action or separately file an action for enforcement. Further, the law enables persons adversely affected by an order issued by the agency head to request review in the U.S. Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. There is a 60-day time limit for such filing from the date that the agency head issued the order.

Paragraph (h) of section 4712 provides that nothing in the new law may be construed to provide any rights to disclose classified information not otherwise provided by law. This important caveat has been included at subsection 3.908–8 of the FAR.

A new contract clause is provided for the pilot program, in accordance with paragraph (d) of section 4712. The clause informs offerors that employees working on any Government contract are subject to the whistleblower rights and remedies of the pilot program and requires the contractor (and its subcontractors) to inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712 in the predominant native language of the workforce.

The interim rule applies the pilot to purchases of commercial items and commercially available off-the-shelf (COTS) items. This implementation is consistent with the implementation of the whistleblower protections in 41 U.S.C. 4705.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This interim rule was initiated to amend the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at FAR subpart 3.9. The pilot program is mandated by section 828, entitled ''Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,'' of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). The law establishes a pilot program for the period ending on January 1, 2017. Based on a reading of 41 U.S.C. 3101(c) and sections 827 and 828 of the NDAA for FY 2013, the pilot program will apply to all Federal agencies except DoD, NASA, and the Coast Guard. Except for contracts funded under the American Recovery and Reinvestment Act of 2009 (see 3.907), the current protections for contractor whistleblowers are established in law at 41 U.S.C. 4705; paragraph (c) of section 828 suspends 41 U.S.C. 4705 ''(w)hile section 4712 of this title is in effect . . .'' Paragraph (a) of section 828 adds the new section 4712 to title 41 that contains the elements of the pilot program and is effective until January 1, 2017.

With the exception of DoD, NASA, and the Coast Guard, as well as any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)(4)), the pilot program applies to the employees of Government contractors and their subcontractors. DoD, GSA, and NASA do not expect the pilot program, which applies to the majority of entities doing business with the Government regardless of business size, to have a significant economic impact specific to small entities. The following information is provided as a means of estimating the overall numbers of entities to which the rule will apply. Based on Federal Procurement Data System reporting data, in Fiscal Year 2012, a Government-wide total of 273,970 new awards that exceeded the simplified acquisition threshold were made to small businesses and other than small businesses by agencies other than DoD, NASA, and the Coast Guard. Of that total, 95,436 new award actions were made to small business entities. The remaining 178,534 award actions were made to other than small businesses.

A new contract clause is provided for the pilot program, in accordance with paragraph (d) of section 4712. The clause informs offerors that employees working on any contract awarded are subject to the whistleblower rights and remedies of the pilot program and requires the contractor (and its subcontractors), regardless of business size, to inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712.

There is no requirement for small entities to submit any information under this clause. The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the interim rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–70, FAR Case 2013–015) in correspondence.

## V. Paperwork Reduction Act

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule, without prior opportunity for public comment. This action is necessary for the following reasons:

First, by operation of law, the new statute for the pilot program became effective on July 1, 2013, *i.e.,* Congress included language in section 828(b)

specifically addressing the effective date of 41 U.S.C. 4712. The statute for the pilot program imposes new responsibilities on agencies, and creates certain new rights for contractor and subcontractor employees. Specifically, as of July 1, 2013:

- There are changes and additions in the list of entities to whom a whistleblower disclosure makes the whistleblower employee eligible for additional protections against reprisal;
- Agency heads have expanded responsibilities to take specific actions with regard to a finding by the Inspector General of the executive agency involved of reprisal against a contractor whistleblower;
- The law requires that the written notice to employees of their whistleblower rights must be provided in the ''predominant native language of the workforce;'' and
- Contractors must flow down to their subcontractors the requirement to provide written notice to their employees.

In addition, there is a new exemption for elements of the intelligence community that was not available under previous laws.

The most effective and efficient way to ensure awareness and compliance by agencies and their contractors with all of these requirements is through immediate regulatory change. Delaying promulgation may delay the effective date of regulations but will not postpone when the law becomes applicable to contractors (and subcontractors). Thus, ordinary notice and comment procedures would unnecessarily increase the risk of confusion and noncompliance, defeating the regulatory objective.

Moreover, there is little likelihood that the publication of this rule without prior comment will increase burden on contractors. This interim regulation provides basic guidance that agencies and contractors need to comply with the statute. Indeed, this regulation prescribes little beyond that which is set forth clearly in the statute. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 3 and 52**

Government procurement.

Dated: September 24, 2013.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 3 and 52 as set forth below:

## PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 1. The authority citation for 48 CFR part 3 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Revise section 3.900 to read as follows:

### 3.900 Scope of subpart.

This subpart implements three different statutory whistleblower programs. This subpart does not implement 10 U.S.C. 2409, which is applicable only to DoD, NASA, and the Coast Guard.

(a) *41 U.S.C. 4705 (in effect before July 1, 2013 and on or after January 2, 2017).* Sections 3.901 through 3.906 of this subpart implement 41 U.S.C. 4705, applicable to civilian agencies other than NASA and the Coast Guard, except as provided in paragraph (c) of this section. These sections are not in effect for the duration of the pilot program described in paragraph (b) of this section.

(b) *41 U.S.C. 4712 (in effect on July 1, 2013 through January 1, 2017).* Section 3.908 of this subpart implements the pilot program, applicable to civilian agencies other than NASA and the Coast Guard, except as provided in paragraph (c) of this section.

(c) *Contracts funded by the American Recovery and Reinvestment Act.* Section 3.907 of this subpart implements section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and applies to all contracts funded in whole or in part by that Act.

■ 3. Add sections 3.908 through 3.908–9 to subpart 3.9 to read as follows:

### 3.908 Pilot program for enhancement of contractor employee whistleblower protections

#### 3.908–1 Scope of section.

(a) This section implements 41 U.S.C. 4712.

(b) This section does not apply to—

(1) DoD, NASA, and the Coast Guard; or

(2) Any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4)). This section does not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(i) Relates to an activity of an element of the intelligence community; or

(ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

#### 3.908–2 Definitions.

As used in this section—

*Abuse of authority* means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract of such agency.

*Inspector General* means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for, or on behalf of, the executive agency concerned.

#### 3.908–3 Policy.

(a) Contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this subsection, information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract, a gross waste of Federal funds, an abuse of authority relating to a Federal contract, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract). A reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) *Entities to whom disclosure may be made.*

(1) A Member of Congress or a representative of a committee of Congress.

(2) An Inspector General.

(3) The Government Accountability Office.

(4) A Federal employee responsible for contract oversight or management at the relevant agency.

(5) An authorized official of the Department of Justice or other law enforcement agency.

(6) A court or grand jury.

(7) A management official or other employee of the contractor or subcontractor who has the

responsibility to investigate, discover, or address misconduct.

(c) An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract shall be deemed to have made a disclosure.

**3.908–4 Filing complaints.**

A contractor or subcontractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.908–3 of this section may submit a complaint with the Inspector General of the agency concerned. Procedures for submitting fraud, waste, abuse, and whistleblower complaints are generally accessible on agency Office of Inspector General Hotline or Whistleblower Internet sites. A complaint by the employee may not be brought under 41 U.S.C. 4712 more than three years after the date on which the alleged reprisal took place.

**3.908–5 Procedures for investigating complaints.**

Investigation of complaints by the Inspector General will be in accordance with 41 U.S.C. 4712(b).

**3.908–6 Statutory remedies.**

(a) *Agency response to Inspector General report.* Not later than 30 days after receiving an Inspector General report in accordance with 41 U.S.C. 4712, the head of the agency shall—

(1) Determine whether sufficient basis exists to conclude that the contractor or subcontractor has subjected the employee who submitted the complaint to a reprisal as prohibited by 3.908–3; and

(2) Issue an order denying relief or take one or more of the following actions:

(i) Order the contractor to take affirmative action to abate the reprisal.

(ii) Order the contractor or subcontractor to reinstate the complainant-employee to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the contractor or subcontractor to pay the complainant-employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(b) *Complainant's right to go to court.* If the head of the agency issues an order denying relief or has not issued an order within 210 days after the submission of the complaint or within 30 days after the expiration of an extension of time granted in accordance with 41 U.S.C. 4712(b)(2)(B) for the submission of the Inspector General's report on the investigative findings of the complaint to the head of the agency, the contractor or subcontractor, and the complainant, and there is no showing that such delay is due to the bad faith of the complainant—

(1) The complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint; and

(2) The complainant may bring a *de novo* action at law or equity against the contractor or subcontractor to seek compensatory damages and other relief available under 41 U.S.C. 4712 in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury. An action under this authority may not be brought more than two years after the date on which remedies are deemed to have been exhausted.

(c) *Admissibility in evidence.* An Inspector General determination and an agency head order denying relief under this section shall be admissible in evidence in any *de novo* action at law or equity brought pursuant to 41 U.S.C. 4712.

(d) *No waiver.* The rights and remedies provided for in 41 U.S.C. 4712 may not be waived by any agreement, policy, form, or condition of employment.

**3.908–7 Enforcement of orders.**

(a) Whenever a contractor or subcontractor fails to comply with an order issued under 3.908–6(a)(2) of this section, the head of the agency concerned shall file an action for enforcement of the order in the U.S. district court for a district in which the reprisal was found to have occurred. In any action brought pursuant to this authority, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs. The complainant-employee upon whose behalf an order was issued may also file such an action or join in an action filed by the head of the agency.

(b) Any person adversely affected or aggrieved by an order issued under 3.908–6(a)(2) may obtain review of the order's conformance with 41 U.S.C. 4712 and its implementing regulations, in the U.S. court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Filing such an appeal shall not act to stay the enforcement of the order of the head of an agency, unless a stay is specifically entered by the court.

**3.908–8 Classified information.**

41 U.S.C. 4712 does not provide any right to disclose classified information not otherwise provided by law.

**3.908–9 Contract clause.**

The contracting officer shall insert the clause at 52.203–17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights, in all solicitations and contracts that exceed the simplified acquisition threshold.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for 48 CFR part 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 5. Add section 52.203–17 to read as follows:

**52.203–17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights.**

As prescribed in 3.908–9, insert the following clause:

**Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistlerblower Rights (Sep 2013)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

(End of clause)

■ 6. Amend section 52.212–4 by revising the date of the clause; and removing from paragraph (r) ''41 U.S.C.

265'' and adding ''41 U.S.C. 4712'' in its place.

The revised text reads as follows:

**52.212–4 Contract Terms and Conditions—Commercial Items.**

* * * * *

Contract Terms and Conditions—Commercial Items (Sep 2013)

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[FR Doc. 2013–23703 Filed 9–27–13; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 31

**[FAC 2005–70; FAR Case 2013–017; Item II; Docket 2013–0017, Sequence 1]**

**RIN 9000–AM64**

## Federal Acquisition Regulation; Allowability of Legal Costs for Whistleblower Proceedings

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 that addresses the allowability of legal costs incurred by a contractor or subcontractor related to a whistleblower proceeding commenced by the submission of a complaint of reprisal by the contractor or subcontractor employee.

**DATES:** *Effective:* September 30, 2013.

*Comment Date:* Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2013 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–70, FAR Case 2013–017, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2013–017'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2013–017.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2013–017'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005–70, FAR Case 2013–017, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward N. Chambers, Procurement Analyst, at 202–501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–70, FAR Case 2013–017.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This interim rule revises the cost principle at FAR 31.205–47 to implement sections 827 paragraph (g) and 828 paragraph (d) of the NDAA for FY 2013 (Pub. L. 112–239). Section 827 paragraph (g) amends 10 U.S.C. 2324(k), Allowable costs under defense contracts, and section 828 paragraph (d) similarly amends 41 U.S.C. 4310, Proceeding costs not allowable, to address the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute (10 U.S.C. 2409, Contractor employees: protection from reprisal for disclosure of certain information, or 41 U.S.C. 4712, Pilot program for enhancement of contractor [employee] protection from reprisal for disclosure of certain information, respectively).

The NDAA for FY 2013 (Pub. L. 112–239, enacted January 2, 2013) enacted enhanced whistleblower protections for contractor and subcontractor employees in separate, but parallel, sections of the NDAA for titles 10 and 41 agencies, respectively. Title 10 agencies are required by the terms of section 827 paragraph (i)(2) to revise their respective FAR supplements. These enhanced whistleblower protections and the associated cost principle changes are being implemented by two Defense Federal Acquisition Regulation Supplement (DFARS) cases (for DoD only) and two FAR cases (for title 41 agencies), which are independent, but parallel, rulemakings because of some minor differences in the operations of the underlying statutes and because the title 41 statute is only a four-year pilot program.

Sections 827 and 828, in addition to the paragraphs relating to the allowability of the legal costs for whistleblower proceedings, also enhance the whistleblower protections for contractor and subcontractor employees at 10 U.S.C. 2409 (applicable to DoD, NASA, and the Coast Guard) and create a new pilot program for enhancement of contractor and subcontractor employee whistleblower protections at 41 U.S.C. 4712, applicable to all other civilian agencies (see FAR case 2013–015).

The NDAA for FY 2013 was enacted on January 2, 2013. Section 827 (amending 10 U.S.C. 2409 and 10 U.S.C. 2324) takes effect 180 days after enactment (July 1, 2013) and requires implementation in the DFARS no later than that date. Section 828 paragraph (a), which established 41 U.S.C. 4712, took effect 180 days after enactment. The pilot program is effective through January 1, 2017. During the time period that 41 U.S.C. 4712 (the pilot program) is in effect, the effectiveness of the prior statute that covered whistleblower protections under 41 U.S.C. 4705 is suspended.

The changes to 41 U.S.C. 4310 (required by section 828 paragraph (d)) were effective upon enactment and specifically referenced 41 U.S.C. 4712, with no specified applicability to contracts, orders, or contract modifications. Although the change to the text of 41 U.S.C. 4310 is permanent, the change only covers actions under 41 U.S.C. 4712, which expires January 1, 2017. Therefore, the new portion of the statute addressing proceeding costs that references 41 U.S.C. 4712, unless the pilot program is extended, will cease to be effective after January 1, 2017.

### II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of

Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**III. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because most contracts awarded to small entities are awarded on a competitive fixed-price basis, and do not require application of the cost principles contained in this rule. However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The objective of this rule is to address the allowability of legal costs incurred by a contractor in connection with a proceeding commenced by an employee submitting a complaint under 10 U.S.C. 2409 or 41 U.S.C. 4712. The statutory authority is 10 U.S.C. 2324(k) and 41 U.S.C. 4310.

Most contracts awarded on a fixed-price competitive basis do not require application of the cost principles. Most contracts valued at or below the simplified acquisition threshold are awarded on a fixed price competitive basis. Requiring submission of certified cost or pricing data for acquisitions that do not exceed the simplified acquisition threshold is prohibited (FAR 15.403–4(a)(2)). According to Federal Procurement Data System (FPDS) data for FY 2012, there were 73,014 Federal new contract awards over the simplified acquisition threshold in FY 2012. Of those contracts, only 11,279 awards were to small businesses on other than a competitive fixed-price basis. Within that number of awards, this rule would only affect a contractor if a contractor employee commenced a proceeding by submitting a complaint under 10 U.S.C. 2409 or 41 U.S.C. 4712, and if that proceeding resulted in imposition of a monetary penalty or an order to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712. We do not have data on the percentage of contracts that involve submission of a whistleblower complaint and result in monetary penalty or an order to take corrective action.

There are no reporting, recordkeeping, or other compliance requirements in this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD, GSA, and NASA were unable to identify any alternatives to the rule which would reduce the impact on small entities and still meet the requirements of the statute.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–70, FAR Case 2013–017) in correspondence.

**IV. Paperwork Reduction Act**

The interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**V. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. By operation of law, the new statute for the whistleblower protection pilot program became effective on July 1, 2013, *i.e.,* Congress included language in section 828 paragraph (b) specifically addressing the effective date of 41 U.S.C. 4712. Section 828 paragraph (d), which is implemented through this rulemaking, revised 41 U.S.C. 4310, effective upon enactment. 41 U.S.C. 4310 addresses the contractor's legal fees arising from an employee's complaint of reprisal and makes these fees expressly unallowable costs when there is contractor culpability. The most effective and efficient way to ensure awareness and compliance by agencies and their contractors with section 828 paragraph (d) is through the issuance of an interim rule. This regulation requires nothing beyond that which is set forth clearly in the statute. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: September 24, 2013.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 31.205–47 by revising the introductory text of paragraph (b), and paragraph (b)(2) to read as follows:

**31.205–47 Costs related to legal and other proceedings.**

* * * * *

(b) In accordance with 41 U.S.C. 4310 and 10 U.S.C. 2324(k), costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government, or by a contractor or subcontractor employee submitting a whistleblower complaint of reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409, for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—

* * * * *

(2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct; or imposition of a monetary penalty, or an order issued by the agency head to the contractor or subcontractor to take corrective action under 41 U.S.C. 4712 or 10 U.S.C. 2409, where the proceeding does not involve an allegation of fraud or similar misconduct;

* * * * *

[FR Doc. 2013–23702 Filed 9–27–13; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Chapter 1

**[Docket FAR 2013–0078, Sequence 6]**

## Federal Acquisition Regulation; Federal Acquisition Circular 2005–70; Small Entity Compliance Guide

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–70, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–70, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

**DATES:** September 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–70 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULE LISTED IN FAC 2005–70

| Item | Subject | FAR Case | Analyst |
|---|---|---|---|
| I* | Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (Interim) | 2013–015 | Corrigan. |
| II* | Allowability of Legal Costs for Whistleblower Proceedings (Interim) | 2013–017 | Chambers. |

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–70 amends the FAR as specified below:

**Item I—Pilot Program for Enhancement of Contractor Employee Whistleblower Protections (FAR Case 2013–015)**

This interim rule amends the FAR to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at subpart 3.9. In accordance with FAR 1.108(d)(3), contracting officers are encouraged to include the changes in these rules in major modifications to contracts and orders awarded prior to the effective date of this interim rule. The pilot program is mandated by section 828, entitled ''Pilot Program for Enhancement of Contractor Employee Whistleblower Protections,'' of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2, 2013). This rule implements section 828 by amending FAR 3.900, Scope of subpart, to make FAR 3.901 through 3.906 inapplicable to DoD, NASA, and the Coast Guard and to prohibit the use of these sections for new awards by all other agencies subject to the FAR (title 41 agencies) through January 1, 2017. This rule creates a new FAR section 3.908 to be used by title 41 agencies through January 1, 2017. Other exceptions: FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, is unaffected by this rule. This rule does not provide any right not otherwise provided by law to disclose classified information, nor does it apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)(4)). In addition, the interim rule applies to actions over the simplified acquisition threshold.

**Item II—Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013–017)**

This interim rule amends the FAR by revising the cost principle at FAR 31.205–47 to implement sections 827(g) and 828(d) of the NDAA for FY 2013 (Pub. L. 112–239). There are two new whistleblower programs for contractor and subcontractor employees, at 10 U.S.C. 2409 and 41 U.S.C. 4712. The latter program is a pilot program, being addressed in FAR Case 2013–015, amending FAR subpart 3.9. The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. Because most contracts awarded to small businesses use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

Dated: September 24, 2013.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

[FR Doc. 2013–23701 Filed 9–27–13; 8:45 am]

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