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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0342; Directorate Identifier 2013–NE–14–AD; Amendment 39–17750; AD 2014–03–16]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co. KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co. KG (RRD) Tay 620–15, 650–15, and 651–54 turbofan engines. This AD requires replacement of low-pressure compressor (LPC) fan blades. This AD was prompted by the discovery that the LPC fan blades leading edges erode in service and create an unacceptable blade flutter margin. We are issuing this AD to prevent LPC fan blade failure, damage to the engine, and damage to the airplane.

DATES: This AD becomes effective March 18, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0342; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Anthony W. Cerra, Jr., Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7128; fax: 781–238–7199; email: *anthony.cerra@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on September 26, 2013 (78 FR 59291). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Service history of Tay series engines discovered that low pressure compressor (LPC) fan blade leading edge is exposed to excessive deterioration. The LPC fan blade leading edge profile influences the LPC aerodynamic characteristics and stability. This condition, if not corrected, could reduce fan flutter margin and, in some cases, could lead to fan blade failure, possibly resulting in uncontained release of high energy debris with consequent damage to, and/or reduced control of, the aeroplane.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0342-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM (78 FR 59291, September 26, 2013).

Conclusion

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

Costs of Compliance

We estimate that this AD will affect about 52 engines of U.S. registry. We also estimate that it will take about six hours per product to comply with this AD. The average labor rate is $85 per hour. Required parts will cost about $11,000 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $598,520.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39 AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–03–16 Rolls-Royce Deutschland Ltd & Co. KG (formerly Rolls-Royce plc): Amendment 39–17750; Docket No. FAA–2013–0342; Directorate Identifier 2013–NE–14–AD.

(a) Effective Date

This AD becomes effective March 18, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co. KG (RRD) Tay 620–15, 650–15, and 651–54 turbofan engines.

(d) Reason

This AD was prompted by the discovery that the low-pressure compressor (LPC) fan blade leading edges erode in service and create an unacceptable blade flutter margin. We are issuing this AD to prevent LPC fan blade failure, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions:

(1) For Tay 620–15 engines, replace the complete set of LPC fan blades with a set eligible for installation as follows:

(i) If on the effective date of this AD, the LPC fan blades:

(A) Have less than 10,000 flight cycles since new (FCSN) or flight cycles since last repair (FCSLR), replace the blades before accumulating 12,000 FCSN or FCSLR.

(B) Have 10,000 or more FCSN or FCSLR, replace the blades within 2,000 flight cycles (FC).

(ii) Thereafter, replace the LPC fan blades within 12,000 FCSN or FCSLR.

(2) For Tay 650–15 and Tay 651–54 engines, replace the complete set of LPC fan blades with a set eligible for installation as follows:

(i) If on the effective date of this AD, the LPC fan blades:

(A) Have less than 8,000 FCSN or FCSLR, replace the blades before accumulating 10,000 FCSN or FCSLR.

(B) Have 8,000 or more FCSN or FCSLR, replace the fan blades within 2,000 FC.

(ii) Thereafter, replace the LPC fan blades within 10,000 FCSN or FCSLR.

(f) Definitions

(1) For the purpose of this AD, a repair is one that was performed in accordance with RRD Alert Non-Modification Service Bulletin (NMSB) No. Tay-72–A1782, Revision 2, dated May 30, 2013, or earlier versions of this Alert NMSB.

(2) LPC fan blades eligible for installation are:

(i) For Tay 620–15 engines, LPC fan blades with less than 12,000 FCSN or FCSLR; and

(ii) For Tay 650–15 and Tay 651–54 engines, LPC fan blades with less than 10,000 FCSN or FCSLR.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For more information about this AD, contact Anthony W. Cerra, Jr., Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7128; fax: 781–238–7199; email: *anthony.cerra@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2013–0143, dated July 12, 2013, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0342-0002.*

(3) RRD Alert NMSB No. Tay-72–A1782, Revision 2, dated May 30, 2013, pertains to the subject of this AD and can be obtained from RRD, using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co. KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1200 (direct 1016); fax: 49 0 33–7086–1212.

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

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on January 30, 2014.

Colleen M. D'Alessandro,

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

[FR Doc. 2014–02809 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 126, 127, 128, and 130

RINs 1400–AD49, 1400–AC37, and 1400–AC81

[Public Notice: 8620]

Amendment to the International Traffic in Arms Regulations: Changes to Authorized Officials and the UK Defense Trade Treaty Exemption; Correction of Errors in Lebanon Policy and Violations; and Adoption of Recent Amendments as Final

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to remove the managing director as an authorized official, update the marking and reporting requirements for the UK defense treaty exemption, correct a typographical error in the paragraph on export policy regarding Lebanon, and correct an error of syntactical arrangement in a section of the regulations regarding violations. The Department is also adopting as a final rule certain sections of the ITAR that were published in an interim final rule.

DATES: *Effective Date:* This rule is effective February 11, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Removing Managing Director, Other Changes.

SUPPLEMENTARY INFORMATION: The Department is removing ''Managing Director of Defense Trade Controls'' as an authorized official from ITAR § 120.1(b)(1) because it is no longer a position within the Department. Various sections of the ITAR are amended as a result. In each of these instances, another authorized official as identified in ITAR § 120.1(b) replaces the managing director.

The Department is updating the text of the licensing exemption created pursuant to the Treaty Between the Government of the United States of America and the Government of the United Kingdom Concerning Defense Trade Cooperation (the ''UK defense trade treaty exemption''), at ITAR § 126.17, so that it is a clearer representation of treaty requirements and is also consistent with ITAR § 126.16 (the Australia defense trade treaty exemption). Most of the updates

are formatting and textual edits. However, the Department notes in particular changes to: 1) The text for marking requirements (paragraph (j)) to make it clear that items should be marked ''prior to'' export, and to bring the classification level reading in line with treaty requirements; and 2) the indicated method of notification (paragraph (o)) to remove inclusion of Form DS–4048 from the process.

The Department is correcting a typographical error in ITAR § 126.1(t), regarding the export policy on Lebanon. In the preamble to the rule providing that policy (*see* 76 FR 47990, RIN 1400–AC81), the exceptions to the arms embargo were correctly identified as ''not apply[ing] to arms and related materiel for the United Nations Interim Force in Lebanon or as authorized by the Government of Lebanon.'' In the regulation itself, ''or'' was mistakenly replaced with ''and.'' This error is corrected in this rule.

Finally, the Department is correcting an error of syntactical arrangement in ITAR § 127.1(d)(2). This rule clarifies that ineligible parties may not engage in transactions subject to the ITAR; the current construction specifies that such parties may not engage in any transactions regarding defense articles. This section was previously published as an interim final rule at 78 FR 52680 on August 26, 2013 (RIN 1400–AC37); with the identified changes, the Department is adopting it as a final rule.

The Department is also adopting as a final rule other portions of RIN 1400–AC37, as follows: (1) ITAR § 120.1(a) and (b), with changes regarding authorized officials, as described earlier in this section; (2) ITAR § 120.1(c) and (d), without any changes: (3) ITAR § 120.20, with changes regarding authorized officials, as described earlier in this section; (4) ITAR § 126.1(a), (b), (e)(1), (e)(2), and note to paragraph (e), without any changes; (5) all sections of parts 127 and 128, except for ITAR § 127.1(d)(2), which is changed regarding syntactical arrangement, as described earlier in this section, and for ITAR § 128.15(a), which is changed regarding authorized officials, as described earlier in this section. The Department did not receive public comments on these sections of the ITAR during the comment period of the interim final rule.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published portions of this rule as proposed and interim final rules identified as 1400–AC37, with 60- and 45-day provisions for public comment, respectively, and without prejudice to its determination that controlling the import and export of defense articles and services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will 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 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

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. § 804. It will not have an annual effect on the economy of $100,000,000 or more, nor will it result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or have 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 foreign markets.

Executive Orders 12372 and 13132

This rulemaking 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 Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

Executive Order 12988

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

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 120

Arms and munitions, Classified information, Exports.

22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 128

Administrative practice and procedure, Arms and munitions, Exports.

22 CFR Part 130

Arms and munitions, Campaign funds, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 122, 126, 127, 128, and 130 are amended; and the amendments to 22 CFR 120.1(a) and (b), 120.20, and all amendments to 22 CFR parts 127 and 128 except for §§ 127.1(d)(2) and 128.15(a), in the interim rule published at 78 FR 52680 on August 26, 2013, are adopted as final with changes, as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Sections 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 120.1 General authorities, receipt of licenses, and ineligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services is delegated to the Secretary of State by Executive Order 13637. This subchapter implements that authority, as well as other relevant authorities in the Arms Export Control Act (22 U.S.C. 2751 *et seq.*). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade Controls, Bureau of Political-Military Affairs.

(b)(1) *Authorized officials.* All authorities administered by the Deputy Assistant Secretary of State for Defense Trade Controls pursuant to this subchapter may be exercised at any time by the Under Secretary of State for Arms Control and International Security or the Assistant Secretary of State for Political-Military Affairs.

(2) The Deputy Assistant Secretary of State for Defense Trade Controls supervises the Directorate of Defense Trade Controls, which is comprised of the following offices:

(i) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, which have responsibilities related to licensing or other approvals of defense trade, including references under parts 120, 123, 124, 125, 126, 129, and 130 of this subchapter.

(ii) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance therewith, including references contained in parts 122, 126, 127, 128, and 130 of this subchapter, and that portion under part 129 of this subchapter pertaining to registration.

(iii) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, which have responsibilities related to the general policies of defense trade, including references under parts 120 and 126 of this subchapter, and the commodity jurisdiction procedure under part 120 of this subchapter.

* * * * *

■ 3. Section 120.4 is amended by revising paragraph (g), to read as follows:

§ 120.4 Commodity jurisdiction.

* * * * *

(g) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the Deputy Assistant Secretary of State for Defense Trade Controls. The Deputy Assistant Secretary's determination of the appeal will be provided, in writing, within 30 days of receipt of the appeal. If desired, an appeal of the Deputy Assistant Secretary's decision can then be made to the Assistant Secretary for Political-Military Affairs.

■ 4. Section 120.20 is revised to read as follows:

§ 120.20 License or other approval.

License means a document bearing the word ''license'' issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or his authorized designee, that permits the export, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.

Other approval means a document issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or his authorized designee, that approves an activity regulated by this subchapter (*e.g.,* approvals for brokering activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 5. The authority citation for part 122 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 6. Section 122.5 is amended by revising paragraph (a), to read as follows:

§ 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation), of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) This information must be stored in such a manner that none of it may be altered once it is initially recorded without recording all changes, who made them, and when they were made. For processes or systems based on the storage of digital images, the process or system must afford accessibility to all digital images in the records being maintained. All records subject to this section must be maintained for a period of five years from the expiration of the license or other approval, to include exports using an exemption (*see* § 123.26 of this subchapter); or, from the date of the transaction (*e.g.,* expired licenses or other approvals relevant to the export transaction using an exemption). The Deputy Assistant Secretary of State for

Defense Trade Controls and the Director of the Office of Defense Trade Controls Licensing may prescribe a longer or shorter period in individual cases.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 7. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 8. Section 126.1 is amended by revising paragraph (t) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(t) *Lebanon.* It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Lebanon, except that a license or other approval may be issued, on a case-by-case basis, for the United Nations Interim Force in Lebanon (UNIFIL) or as authorized by the Government of Lebanon.

* * * * *

■ 9. Section 126.2 is revised to read as follows:

§ 126.2 Temporary suspension or modification of this subchapter.

The Deputy Assistant Secretary for Defense Trade Controls may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

■ 10. Section 126.3 is revised to read as follows:

§ 126.3 Exceptions.

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Deputy Assistant Secretary of State for Defense Trade Controls may make an exception to the provisions of this subchapter.

■ 11. Section 126.14 is amended by revising paragraph (b) introductory text, to read as follows:

§ 126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.

* * * * *

(b) *Provisions and requirements for comprehensive authorizations.* Requests for the special comprehensive authorizations set forth in paragraph (a) of this section should be by letter addressed to the Directorate of Defense Trade Controls. With regard to a commercial major program or project authorization, or technical data supporting a teaming arrangement, merger, joint venture or acquisition, registered U.S. exporters may consult the Deputy Assistant Secretary of State for Defense Trade Controls about eligibility for and obtaining available comprehensive authorizations set forth in paragraph (a) of this section or pursuant to § 126.9(b) of this subchapter.

* * * * *

■ 12. Section 126.17 is amended by revising paragraphs (a)(1)(iv), (a)(2), (a)(3)(i), (a)(4) introductory text, (a)(4)(iii), (b)(2), (d)(1), (d)(2), paragraph (e) introductory text, (f)(1), (f)(2), (g)(1), (g)(2), (g)(4), (g)(5), (h)(2) through (h)(4), (h)(6) through (h)(8), (i)(1) through (i)(4), (j)(1), (j)(2), (j)(3)(i), (j)(3)(ii), (j)(5), (k)(1)(i)(A), (k)(1)(i)(C), (k)(1)(ii)(B), (l)(1) introductory text, (l)(2)(iii), (l)(2)(iv), (m), (n)(4), (o)(1) introductory text, (o)(1)(iii), and (o)(2) to read as follows:

§ 126.17 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.

(a) * * *

(1) * * *

(iv) *Intermediate consignee* means, for purposes of this section, an approved entity or person who receives, but does not have access to, defense articles, including technical data, for the sole purpose of effecting onward movement to members of the Approved Community (*see* paragraph (k) of this section).

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license from members of the United States Community to members of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community) of defense articles and defense services not listed in Supplement No. 1 to part 126 of this subchapter, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and the United Kingdom and continue to apply fully to defense articles and defense services subject to either of the aforementioned treaties and the exemptions contained in this section.

(3) * * *

(i) The exporter must be registered with the Directorate of Defense Trade Controls (DDTC) and must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction (*see* paragraphs (b) and (c) of this section for specific requirements);

* * * * *

(4) *Transfers.* In order for a member of the Approved Community (*i.e.,* the United States Community and United Kingdom Community) to transfer a defense article or defense service under the Defense Trade Cooperation Treaty within the Approved Community, all of the following conditions must be met:

* * * * *

(iii) The transfer is required for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the Government of the United States and the Government of the United Kingdom pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the United Kingdom Implementing Arrangement (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

* * * * *

(b) * * *

(2) Non-governmental U.S. persons registered with DDTC and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other form

of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

* * * * *

(d) * * *

(1) Her Majesty's Government entities and facilities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; and

(2) The non-governmental United Kingdom entities and facilities identified as members of the Approved Community through the DDTC Web site (*www.pmddtc.state.gov*) at the time of a transaction under this section; non-governmental United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community.

(e) *Authorized End-uses.* The following end-uses, subject to paragraph (f) of this section, are specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom:

* * * * *

(f) * * *

(1) Operations, programs, and projects that can be publicly identified will be posted on the DDTC Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from DDTC; or

* * * * *

(g) * * *

(1) An exporter authorized pursuant to paragraph (b)(2) of this section may market a defense article to members of the United Kingdom Community if that exporter has been licensed by DDTC to export (as defined by § 120.17 of this subchapter) the identical type of defense article to any foreign person and end-use of the article is for an end-use identified in paragraph (e) of this section.

(2) The export of any defense article specific to the existence of (*e.g.,* reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from DDTC.

* * * * *

(4) U.S.-origin defense articles specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority are not eligible for export unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified pursuant to paragraph (e)(1), (2), or (4) of this section.

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI (a)(3) electronically scanned array radar excluded by Note 2) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship, an aircraft) must separately comply with any restrictions placed on that embedded defense article under this subchapter. The exporter must obtain a license or other authorization from DDTC for the export of such embedded defense articles (for example, USML Category XI (a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from DDTC for their export, transfer, reexport, or retransfer).

* * * * *

(h) * * *

(2) Any transfer or other provision of a defense article or defense service for an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of DDTC (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(3) Any retransfer or reexport, or other provision of a defense article or defense service by a member of the United Kingdom Community to a foreign person that is not a member of the United Kingdom Community, or to a U.S. person that is not a member of the United States Community, is prohibited without a license or the prior written approval of DDTC (*see* paragraph (d) of this section for specific information on the identification of the United Kingdom Community).

(4) Any change in the use of a defense article or defense service previously exported, transferred, or obtained under this exemption by any foreign person, including a member of the United Kingdom Community, to an end-use that is not authorized by this exemption is prohibited without a license or other written approval of DDTC (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

* * * * *

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI (a)(3) electronically scanned array radar systems) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship, an aircraft) must separately comply with any restrictions placed on that embedded defense article unless otherwise specified. A license or other authorization must be obtained from DDTC for the export, transfer, reexport, retransfer, or change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned array radar systems that are excluded from this section by Supplement No. 1 to part 126 of this subchapter, Note 2 that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from DDTC for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from DDTC is not required for a transfer, retransfer, or reexport of an exported defense article or defense service under this section, if:

(i) The transfer of defense articles or defense services is made by a member of the United States Community to United Kingdom Ministry of Defence (UK MOD) elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(ii) The transfer of defense articles or defense services is made by a member of the United States Community to an Approved Community member (either United States or UK) that is operating in direct support of UK MOD elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the United Kingdom Community to UK MOD elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iv) The reexport is made by a member of the United Kingdom Community to an Approved Community member (either U.S. or UK) that is operating in direct support of UK MOD elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United

Kingdom Armed Forces transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the UK MOD for an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses); the UK MOD may deploy the item as necessary when conducting official business within or outside the Territory of the United Kingdom. The item must remain under the effective control of the UK MOD while deployed and access may not be provided to unauthorized third parties.

(8) U.S. persons registered, or required to be registered, pursuant to part 122 of this subchapter and members of the United Kingdom Community must immediately notify DDTC of any actual or proposed sale, retransfer, or reexport of a defense article or defense service on the U.S. Munitions List originally exported under this exemption to any of the countries listed in § 126.1 of this subchapter or any person acting on behalf of such countries, whether within or outside the United States. Any person knowing or having reason to know of such a proposed or actual sale, reexport, or retransfer shall submit such information in writing to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(i) *Transitions.* (1) Any previous export of a defense article under a license or other approval of the U.S. Department of State remains subject to the conditions and limitations of the original license or authorization unless DDTC has approved in writing a transition to this section.

(2) If a U.S. exporter desires to transition from an existing license or other approval to the use of the provisions of this section, the following is required:

(i) The U.S. exporter must submit a written request to DDTC, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from DDTC to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by DDTC, the license(s) will be returned to DDTC by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

(ii) Any license(s) not filed with U.S. Customs and Border Protection must be returned to DDTC with a letter citing approval by DDTC to transition to this section as the reason for returning the license(s).

(3) If a member of the United Kingdom Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the United Kingdom Community member must submit a written request to DDTC, either directly or through the original U.S. exporter, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were received, and the Treaty-eligible end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) for which the defense articles or defense services will be used. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the United Kingdom Community member has received approval from DDTC.

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant **Federal Register** notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, and such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the requirements of this subchapter unless the applicable **Federal Register** notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

* * * * *

(j) *Marking of exports.* (1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall be marked or identified prior to movement as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read ''// CLASSIFICATION LEVEL USML//REL USA and GBR Treaty Community//.'' For example, for defense articles classified SECRET, the marking or identification shall be ''//SECRET USML//REL USA and GBR Treaty Community//.''

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be handled while in the UK as ''Restricted USML'' and the standard marking or identification shall read ''// RESTRICTED USML//REL USA and GBR Treaty Community//.''

(2) Where U.S.-origin defense articles are returned to a member of the United States Community identified in paragraph (b) of this section, any defense articles marked or identified pursuant to paragraph (j)(1)(ii) of this section as ''//RESTRICTED USML//REL USA and GBR Treaty Community//'' will be considered unclassified and the marking or identification shall be removed; and

(3) * * *

(i) Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (*e.g.,* propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings as detailed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impractical shall be accompanied by documentation (such as contracts or invoices) or verbal notification clearly associating the technical data with the appropriate markings as detailed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section; and

* * * * *

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported: ''These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-UK Defense Trade Cooperation Treaty for export only to United Kingdom for use in approved projects, programs or operations by members of the United Kingdom Community. They may not be retransferred or reexported or used outside of an approved project, program,

or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.''

(k) * * *

(1) * * *

(i) * * *

(A) Exporters registered with DDTC and eligible;

* * * * *

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under § 129.3(b)(3) of this subchapter, that are identified at the time of export as being on the U.S. Department of Defense Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the DDTC Web site; or

(ii) * * *

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other United Kingdom parties that are identified at the time of export as being on the list of Authorized United Kingdom Intermediate Consignees, which is available on the DDTC Web site.

* * * * *

(l) * * *

(1) All exporters authorized pursuant to paragraph (b)(2) of this section who export defense articles or defense services pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall maintain detailed records of their exports, imports, and transfers. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by DDTC of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to DDTC or a person designated by DDTC (*e.g.,* U.S. Department of State's Bureau of Diplomatic Security) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

* * * * *

(2) * * *

(iii) For exports in support of mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user identify § 126.17(e)(3) (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) For exports that will have a U.S. Government end-use identify § 126.17(e)(4) (the U.S. Government contract number or solicitation number (*e.g.,* ''U.S. Government contract number XXXXX'') shall be placed in the appropriate field in the EEI, as well). Such exports must meet the required export documentation and filing guidelines, including for defense services, of § 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to DDTC containing the information identified in § 130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of $500,000 or more.

(n) * * *

(4) DDTC or a person designated by DDTC (*e.g.,* U.S. Department of State's Bureau of Diplomatic Security), U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection may require the production of documents and information relating to any actual or attempted export, transfer, reexport, or retransfer pursuant to this section. Any foreign person refusing to provide such records within a reasonable period of time shall be suspended from the United Kingdom Community and ineligible to receive defense articles or defense services pursuant to the exemption under this section or otherwise.

(o) * * *

(1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after DDTC has acknowledged receipt of a written notification from the exporter notifying the Department of State if the export involves one or more of the following:

* * * * *

(iii) A contract, regardless of value, for the manufacturing abroad of any item of significant military equipment (*see* § 120.7 of this subchapter); or

* * * * *

(2) The written notification required in paragraph (o)(1) of this section shall indicate the item/model number, general item description, U.S. Munitions List category, value, and quantity of items to be exported pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, and shall be accompanied by the following additional information:

* * * * *

PART 127—VIOLATIONS AND PENALTIES

■ 13. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129.

■ 14. Section 127.1 is amended by revising paragraph (d)(2), to read as follows:

§ 127.1 Violations.

* * * * *

(d) * * *

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any manner in any transaction subject to this subchapter that may involve any defense article, which includes technical data, defense services, or brokering activities, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

* * * * *

■ 15. Section 127.11 is amended by revising paragraph (b), to read as follows:

§ 127.11 Past violations.

* * * * *

(b) *Policy.* An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or

ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Assistant Secretary of State for Political-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Deputy Assistant Secretary of State for Defense Trade Controls the reasons why the application should be considered. If the Assistant Secretary of State for Political-Military Affairs concludes that the application and written explanation have sufficient merit, the Assistant Secretary shall consult with the Office of the Legal Adviser and the Department of the Treasury regarding law enforcement concerns, and may also request the views of other departments, including the Department of Justice. If the Directorate of Defense Trade Controls does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided but should instead refer to the favorable decision.

* * * * *

PART 128—ADMINISTRATIVE PROCEDURES

■ 16. The authority citation for part 128 continues to read as follows:

Authority: Sections 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; E.O. 12291, 46 FR 1981; E.O. 13637, 78 FR 16129.

■ 17. Section 128.5 is amended by revising paragraph (c), to read as follows:

§ 128.5 Answer and demand for oral hearing.

* * * * *

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by paragraph (b) of this section shall be in duplicate and mailed or delivered to the designated Administrative Law Judge. A copy shall be simultaneously mailed to the Deputy Assistant Secretary of State for Defense Trade Controls, SA–1, Room 1200, Department of State, Washington, DC 20522–0112, or delivered to 2401 Street NW., Washington, DC addressed to the Deputy Assistant Secretary of State for Defense Trade Controls, SA–1, Room 1200, Department of State, Washington, DC 20037.

■ 18. Section 128.10 is revised to read as follows:

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Deputy Assistant Secretary of State for Defense Trade Controls or the Administrative Law Judge will dismiss the charges. Where the Administrative Law Judge finds that a violation has been committed, the Administrative Law Judge's recommendation shall be advisory only. The Assistant Secretary of State for Political-Military Affairs will review the record, consider the report of the Administrative Law Judge, and make an appropriate disposition of the case. The Deputy Assistant Secretary of State for Defense Trade Controls may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.7 of this subchapter, impose a civil penalty as provided in § 127.10 of this subchapter, or take such action as the Administrative Law Judge may recommend. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Administrative Law Judge's report will be served upon the respondent.

■ 19. Section 128.13 is amended by revising paragraph (e)(1), to read as follows:

§ 128.13 Appeals.

* * * * *

(e) *Preparation of appeals*—(1) *General requirements.* An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed to the Deputy Assistant Secretary of State for Defense Trade Controls, SA–1, Room 1200, Department of State, Washington, DC 20522–0112 or delivered to 2401 E Street NW., Washington, DC addressed to the Deputy Assistant Secretary of State for Defense Trade Controls, SA–1, Room 1200, Department of State, Washington, DC 20037.

* * * * *

■ 20. Section 128.15 is amended by revising paragraph (a), to read as follows:

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment order may set a probationary period during which the order may be held in abeyance for all or part of the debarment period, subject to the conditions stated therein. The Deputy Assistant Secretary of State for Defense Trade Controls may apply, without notice to any person to be affected thereby, to the Administrative Law Judge for a recommendation on the appropriateness of revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary of State for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order. The party affected by this action may request the Assistant Secretary of State for Political-Military Affairs to reconsider the decision by submitting a request within 10 days of the date of the order.

* * * * *

PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

■ 21. The authority citation for part 130 is revised to read as follows:

Authority: Sec. 39, Pub. L. 94–329, 90 Stat. 767 (22 U.S.C. 2779); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 22. Section 130.9 is amended by revising paragraph (a)(1)(ii), to read as follows:

§ 130.9 Obligation to furnish information to the Directorate of Defense Trade Controls.

(a)(1) * * *

(ii) Fees or commissions in an aggregate amount of $100,000 or more. If so, applicant must furnish to the Directorate of Defense Trade Controls the information specified in § 130.10. The furnishing of such information or an explanation satisfactory to the Director of the Office of Defense Trade Controls Licensing as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

* * * * *

Dated: January 23, 2014.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2014–02293 Filed 2–10–14; 8:45 am]

BILLING CODE 4710–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0833; FRL–9906–35–Region 8]

Approval and Promulgation of Air Quality Implementation Plan; State of Colorado Second Ten-Year PM_{10} Maintenance Plan for Telluride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action approving State Implementation Plan (SIP) revisions submitted by the State of Colorado. On March 31, 2010, the designee of the Governor of Colorado submitted to EPA a revised maintenance plan for the Telluride area for the 24-hour National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}), and the SIP was adopted on November 19, 2009. As required by Clean Air Act (CAA) section 175A, this revised maintenance plan addresses maintenance of the PM_{10} standard for a second 10-year period beyond the area's original redesignation to attainment for the PM_{10} NAAQS. In addition, EPA is taking final action approving the revised maintenance plan's 2021 transportation conformity motor vehicle emissions budget for PM_{10}. Also, we are taking final action to exclude exceedances of the PM_{10} NAAQS that were recorded at the Telluride PM_{10} monitor on April 5, 2010 and April 16, 2013, from use in determining whether or not Telluride continues to attain the PM_{10} NAAQS, because they meet the criteria for exceptional events caused by high wind natural events. This action is being taken under sections 110 and 175A of the CAA.

DATES: This final rule is effective March 13, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0833. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., 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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *Colorado* and *State* mean or refer to the State of Colorado.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The initials *MVEB* mean or refer to motor vehicle emissions budget.

(v) The initials *NAAQS* mean or refer to National Ambient Air Quality Standard.

(vi) The initials *NPR* mean or refer to a notice of proposed rulemaking.

(vii) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).

(viii) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background
II. Final Action
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I. Background

On November 29, 2013, we published a notice of proposed rulemaking (NPR) in which we proposed to approve the revised Telluride PM_{10} Maintenance Plan that Colorado submitted to us on March 31, 2010. We proposed to approve the revised maintenance plan because it demonstrates maintenance through 2021 as required by CAA section 175A(b), retains the control measures from the initial PM_{10} maintenance plan that EPA approved in June of 2001, and meets other CAA requirements for a section 175A maintenance plan. We also proposed to exclude from use in determining whether or not Telluride continues to attain the 24-hour PM_{10} NAAQS exceedances of the 24-hour PM_{10} NAAQS that were recorded at the Telluride PM_{10} monitor on April 5, 2010 and April 16, 2013 because they meet the criteria for exceptional events caused by high wind natural events. In addition, we proposed to approve the revised maintenance plan's 2021 transportation conformity motor vehicle emissions budget (MVEB) for PM_{10} of 1,108 lbs/day.

We received no comments regarding our proposed actions and are finalizing those actions as proposed. For further details regarding the bases for our actions, please see our NPR at 78 FR 71550 (November 29, 2013).

II. Final Action

We are approving the revised Telluride PM_{10} Maintenance Plan that was submitted to us on March 31, 2010. We are approving the revised maintenance plan because it demonstrates maintenance through 2021 as required by CAA section 175A(b), retains the control measures from the initial PM_{10} maintenance plan that EPA approved in June of 2001, and meets other CAA requirements for a section 175A maintenance plan. We are excluding from use in determining whether or not Telluride continues to attain the 24-hour PM_{10} NAAQS exceedances of the 24-hour PM_{10} NAAQS that were recorded at the Telluride PM_{10} monitor on April 5, 2010 and April 16, 2013 because they meet the criteria for exceptional events caused by high wind natural events. We are also approving the revised maintenance plan's 2021 transportation conformity MVEB for PM_{10} of 1,108 lbs/day.[1]

III. Statutory and Executive Orders Review

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

[1] As noted in our NPR, the 2012 PM_{10} MVEB of 10,001 lbs/day from the original PM_{10} maintenance plan must continue to be used for analysis years 2012 through 2020 (as long as such years are within the timeframe of the transportation plan), unless the State elects to submit a SIP revision to revise the 2012 PM_{10} MVEB and EPA approves the SIP revision. 78 FR 71553–71554.

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, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the 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 April 14, 2014. 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, Intergovernmental relations, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: January 27, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read 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 G—Colorado

■ 2. Section 52.332 is amended by adding paragraph (s) to read as follows:

§ 52.332 Control strategy: Particulate Matter.

* * * * *

(s) Revisions to the Colorado State Implementation Plan, PM_{10} Revised Maintenance Plan for Telluride, as adopted by the Colorado Air Quality Control Commission on November 19, 2009, State effective on December 30, 2009, and submitted by the Governor's designee on March 31, 2010. The revised maintenance plan satisfies all applicable requirements of the Clean Air Act.

[FR Doc. 2014–02841 Filed 2–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0454; FRL–9904–31]

Fenpropidin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenpropidin in or on banana. Syngenta, Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 11, 2014. Objections and requests for hearings must be received on or before April 14, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0454, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

applies to them. Potentially affected entities may include:

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

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

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

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0454 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 14, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0454, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm*.

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of December 19, 2012 (77 FR 75082) (FRL–9372–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E7980) by Syngenta, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that EPA establish import tolerances for residues of the fungicide fenpropidin, in or on banana, unbagged fruit at 9.0 parts per million (ppm) and banana, pulp from unbagged fruit at 0.40 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, LLC, the registrant, which is available in the docket, *http://www.regulations.gov*. One comment was received in response to the notice of filing.

Based upon review of the data supporting the petition, tolerances for banana, unbagged fruit have been revised from 9.0 to 10 ppm. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fenpropidin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fenpropidin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The nervous system, eye, stomach, esophagus, and skin are the major target organs for fenpropidin. The principal toxic effects in laboratory animals following oral exposure to fenpropidin are irritant effects on the esophagus, stomach, and skin, with peripheral parts of the body (tail and ears) affected as well. The skin lesions in the mouse following oral exposure include dry and/or flaky skin on tail, paws, and ears, loss of tail tip; hyperkeratosis of tail, ear, esophagus, subcutis, stomach, dermatitis of ear and tail, and hyperplasia of the nose. Skin lesions in the rat following chronic oral exposure include dry and flaky skin around mouth, tail tip missing, pustules on tail, and damaged or shortened tails. The skin lesions in the dog following oral exposure *via* capsules included indurated and inelastic pads; scale formation on external ear; reddening of skin of thoracic, inguinal, and axillary regions; hardened foot pads; microscopic findings of acanthosis of the epidermis and ear; hyperkeratosis of footpad and ear; and skin inflammation following chronic oral exposure. An acute lethality study shows that fenpropidin is not acutely toxic by the oral route of exposure.

Clinical signs of neurotoxicity and neuropathology are the other major toxic effects observed following oral exposure in the rat and dog, and the dog is the most sensitive species for the neurotoxic effects. In the rat 90-day neurotoxicity study, hindpaw grip strength was decreased in both sexes and forepaw grip strength was decreased in males during the functional observational battery (FOB) evaluations. Bilateral hindlimb paralysis/paresis, which correlated with the histopathological finding of demyelination of the spinal cord, cranial and spinal nerve roots, and proximal peripheral nerve, was

observed in one female rat at the highest dose tested. In dogs, paresis was observed in one male dog that was sacrificed on week 38, and demyelination of the spinal cord was observed in three of four male dogs at the high dose.

In the chronic toxicity/carcinogenicity study in rats, benign pancreatic cell adenomas were seen in high-dose male rats. Tumors were not increased in the mouse carcinogenicity study in either sex or in the female rat. Mutagenicity is not of concern. Although the rat study showed that fenpropidin was associated with benign pancreatic islet cell adenomas in the male, the Agency determined that quantification of risk using a non-linear approach; i.e., the chronic reference dose (RfD), for fenpropidin will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to fenpropidin. The conclusion is based on the following considerations: (i) The tumors found were benign; (ii) the tumors are common age-related tumors; (iii) the tumors occurred in only one sex in one species; (iv) fenpropidin is not mutagenic; and (v) no carcinogenic response was seen in either sex in the mouse.

Specific information on the studies received and the nature of the adverse effects caused by fenpropidin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found *at http://www.regulations.gov* in the document ''Fenpropidin: Human Health Risk Assessment to Support the Proposed Tolerance for Imported Bananas'' at page 10 in docket ID number EPA–HQ–OPP–2012–0454.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fenpropidin used for human risk assessment is shown in the following table.

SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FENPROPIDIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 10 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.10 mg/kg/day. aPAD = 0.10 mg/kg/day.	Developmental toxicity study (rabbit). LOAEL = 20 mg/kg/day based on [on increased fetal (litter) incidence of malformations (persistent truncus arteriosus, severely malaligned sternebrae) and decreased male fetal body weight in the absence of maternal effects. (does dosed on GD 7–28).
Acute dietary (Infants and children)	NOAEL = 7 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.07 mg/kg/day. aPAD = 0.07 mg/kg/day.	Developmental neurotoxicity study (rat). LOAEL = 27 mg/kg/day based on [decreased brain weight, decreased radial thickness of the cortex at level 3, and decreased vertical height of the dentate hilus at level 3 in females on PND 72.
Chronic dietary (All populations)	NOAEL= 2.3 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.023 mg/kg/day. cPAD = 0.023 mg/kg/day.	Rat chronic/carcinogenicity. LOAEL = 11.8 mg/kg/day based on [decreased body weight and body weight gains in females, clinical signs in males and females (pustules on tail, missing tail tip, and dry, flaky skin around mouth), and microscopic liver lesions (centrilobular fat) in females.
Cancer (Oral, dermal, inhalation)	Quantification of risk using a non-linear approach; *i.e.,* RfD, for fenpropidin will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to fenpropidin.		

Point of Departure (POD) = A data point or an estimated point derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level.
LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animals to humans (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = FQPA Safety Factor. cPAD = chronic population adjusted dose. RfD = reference dose. N/A = not applicable.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fenpropidin, EPA assessed dietary exposures from fenpropidin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single

exposure. Such effects were identified for fenpropidin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat In America (NHANES/WWEIA) conducted from 2003–2008. As to residue levels in food, EPA made the following assumptions for the acute exposure assessment: Residues will be present in bananas at the highest field trial value from banana pulp (the edible portion of the fruit), 100 percent crop treated (PCT), and Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's NHANES/WWEIA conducted from 2003–2008 as well. As to residue levels in food, EPA made the following assumptions for the chronic exposure assessment: Residues will be present in bananas at the average field trial values from banana pulp, 100 PCT, and DEEM–FCID Version 3.16.

iii. *Cancer.* Based on the data summarized in Unit III.A., the Agency has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to fenpropidin. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA used anticipated residues in the dietary assessment for fenpropidin. One hundred PCT and field trial residues were assumed for all food commodities. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The proposed tolerance in or on imported banana will not impact residues in the U.S. drinking water. Therefore, a drinking water assessment was not needed.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenpropidin is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fenpropidin to share a common mechanism of toxicity with any other substances, and fenpropidin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenpropidin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The potential impact of *in utero* fenpropidin exposure was investigated in two developmental toxicity studies (one in the rat and one in the rabbit), a rat developmental neurotoxicity study (DNT) and a two multi-generation reproduction toxicity study in rats. In the rat developmental toxicity study, a quantitative susceptibility was observed; asymmetrically shaped sternebrae #5 occurred at the high dose in the absence of maternal toxicity. In the rabbit developmental study, a quantitative susceptibility was noted with an increase in fetal (litter) incidence of malformations (persistent truncus arteriosus and severely malaligned sternebrae) in the absence of maternal toxicity. A qualitative susceptibility was noted in the rat developmental neurotoxicity study (DNT). In that study, the pup effects were: Increased number of dead pups/cannibalized pups; decreased brain weight; decreased radial thickness of the cortex (level 3); decreased male pup body weight during the preweaning period; and decreased vertical height of the dentate hilus (level 3) in PND 72 females. At the same dose in the maternal animals, the only adverse effect observed was skin irritation (scabbing and hair loss around the mouth and forelimbs). Qualitative susceptibility in the 2-generation reproduction study was based on the decrease in pup body weights and delayed onset of sexual maturation observed at the same dose that resulted in decreased maternal body weight and increased incidence/severity of cortical fatty changes in adrenals. The apparent enhanced sensitivity may be due to the limited number of evaluations conducted in dams in these studies rather than a true sensitivity of the young. Clear NOAELs were established for the endpoints of concern, and these are the basis for the acute dietary endpoints for females 13+ and for infants and children.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fenpropidin is complete.

ii. The level of concern for neurotoxicity is low because there is a developmental neurotoxicity study in rats, the effects are well characterized, the dose-response curve for these effects are well characterized, and clear NOAELs have been identified.

iii. Though there is evidence of quantitative susceptibility in the rat and rabbit developmental toxicity studies and qualitative susceptibility in the 2-generation reproduction study in rats and the DNT in rats, the endpoints and doses selected for risk assessment are protective for these effects.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on conservative

high-end assumptions in the dietary exposure assessment, including the use of 100 PCT assumptions and field trial residues. This is an import tolerance; therefore, there is no drinking water, no residential, and no occupational exposure.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Partially refined acute dietary exposure assessments were performed using individual points of departure (PODs) for the two population subgroups all infants and children, and females 13–49 years old. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure to fenpropidin from food will occupy 3% of the aPAD for infants <1 year old and <1% of the aPAD for females 13–49 years old, for the populations at the 95th percentile of exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenpropidin from food will utilize <1% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for fenpropidin.

3. *Short- and Intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Since the petitioner is proposing a tolerance in/on imported banana and since fenpropidin is not registered for any use patterns that would result in short-term and intermediate-term residential exposure, selection of incidental oral, dermal, and inhalation point of departures for assessment of residential exposure is not required.

4. *Aggregate cancer risk for U.S. population.* In the chronic toxicity/carcinogenicity study in rats, benign pancreatic cell adenomas were seen in high-dose male rats. Tumors were not increased in the mouse carcinogenicity study in either sex or in the female rat. Mutagenicity is not of concern. Although the rat study showed that fenpropidin was associated with benign pancreatic islet cell adenomas in the male, the Agency determined that quantification of risk using a non-linear approach; i.e., the chronic reference dose (RfD), for fenpropidin will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to fenpropidin. The conclusion is based on the following considerations: (i) The tumors found were benign; (ii) the tumors are common age-related tumors; (iii) the tumors occurred in only one sex in one species; (iv) fenpropidin is not mutagenic; and (v) no carcinogenic response was seen in either sex in the mouse.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to fenpropidin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (independent laboratory validation trial (ILV) and liquid chromatography with mass spectrometric (LC–MS/MS) detection method (Method No. REM 164.09)) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for fenpropidin.

C. Response to Comments

One comment was received from an anonymous commenter objecting to increasing the tolerances. The comment contained no scientific data or evidence to rebut the Agency's conclusions that no harm will result to infants and children from aggregate exposure to fenpropidin residues.

D. Revisions to Petitioned-for Tolerances

Based on the analysis of the residue field trial data and Organization for Economic Cooperation and Development (OECD) tolerance calculator procedure, a banana tolerance of 10 ppm for residues of fenpropidin is appropriate. The Agency excluded residue values from one of the field trials. The study author reported that samples from that field trial may have been mislabeled as residues were higher in the control samples; therefore, results from this test were not used in the tolerance calculations. A tolerance for banana pulp is not required; tolerances are to be established on the whole banana fruit.

V. Conclusion

Therefore, tolerances are established for residues of fenpropidin, (1-[3-[4-(1,1-dimethylethyl)phenyl]-2-methylpropyl]piperidine), including its metabolites and degradates, in or on banana at 10 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections

subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 31, 2014.

Steven P. Bradbury,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.676 to subpart C, to read as follows:

§ 180.676 Fenpropidin; tolerances for residues.

(a) *General.* Tolerances are established for the residues of fenpropidin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only fenpropidin (1-[3-[4-(1,1-dimethylethyl)phenyl]-2-methylpropyl]piperidine).

Commodity	Parts per million
Banana [1]	10

[1] There are no U.S. registrations as of December 13, 2013.

(b) *Section 18 tolerance.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2014–02936 Filed 2–10–14; 8:45 am]

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Proposed Rules

Federal Register

Vol. 79, No. 28

Tuesday, February 11, 2014

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 52, 60, 61, 63, 70, 71, 72, 76, 110, and 150

[NRC–2013–0132]

RIN 3150–AJ27

Deliberate Misconduct Rule and Hearings on Challenges to the Immediate Effectiveness of Orders

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning deliberate misconduct by licensees and other persons otherwise subject to the NRC's jurisdiction (known as the ''Deliberate Misconduct Rule'') and its regulations concerning challenges to immediately effective orders issued by the NRC. This proposed rule would incorporate the concept of ''deliberate ignorance'' as an additional basis on which to take enforcement action against persons who violate any of the NRC's Deliberate Misconduct Rule provisions. The NRC is also proposing to amend its regulations regarding challenges to the immediate effectiveness of NRC enforcement orders to clarify that the NRC staff has the burden of persuasion in showing that adequate evidence supports the grounds for the order and that immediate effectiveness is warranted and to clarify the authority of the NRC's presiding officer to order live testimony in resolving these challenges.

DATES: Submit comments by May 12, 2014. Comments received after this date will be considered if it is practical to do so. However, the NRC is able to ensure consideration only of 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–2013–0132. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Andrew Pessin, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1062, email: *Andrew.Pessin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0132 when contacting the NRC about the availability of information for this proposed rule. You may access publicly available information related to this proposed rule by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0132.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's Public Document Room:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0132 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and 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 into ADAMS.

II. Background

The NRC promulgated the Deliberate Misconduct Rule on August 15, 1991.[1] The Deliberate Misconduct Rule appears in several sections of Title 10 of the *Code of Federal Regulations* (10 CFR).[2] As explained in the statement of

[1] 56 FR 40664.

[2] The Deliberate Misconduct Rule appears in 10 CFR 30.10, 40.10, 50.5, 52.4, 60.11, 61.9b, 63.11, 70.10, 71.8, 72.12, 76.10, and 110.7b.

considerations [3] for the 1991 rulemaking, the purpose of the Deliberate Misconduct Rule was to put both licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that ''causes or, but for detection, would have caused, a [NRC] licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.'' [4] In this regard, the Deliberate Misconduct Rule also included ''individual liability for deliberate submission of incomplete or inaccurate information to the NRC, a licensee, contractor, or subcontractor.'' [5] Therefore, the Deliberate Misconduct Rule expressly extended the NRC's civil penalty enforcement authority (10 CFR Part 2, Subpart B) to those individuals who, although unlicensed by the NRC, are employed by an NRC licensee, or are employed by a contractor or subcontractor of an NRC licensee or who otherwise ''knowingly provide goods or services that relate to a licensee's activities subject to NRC regulation.'' [6]

This proposed rule would amend the Deliberate Misconduct Rule to address an issue that arose during parallel NRC civil and U.S. Department of Justice (DOJ) criminal proceedings involving the same individual and the same set of facts. Specifically, the proposed rule would amend the Deliberate Misconduct Rule to incorporate the concept of ''deliberate ignorance'' as an additional basis on which to take enforcement action against persons who violate the Deliberate Misconduct Rule. Under federal criminal law, an individual acts with ''deliberate ignorance'' when that individual attempts to avoid criminal prosecution and conviction by deliberately remaining ignorant of critical facts, which if clearly known by that individual, would provide a basis to criminally prosecute that individual or otherwise subject the individual to an agency civil penalty enforcement proceeding.[7]

In addition, this proposed rule would amend 10 CFR 2.202, the NRC's regulation governing issuance of orders, including those orders made immediately effective. Presently, the Commission may make orders immediately effective under 10 CFR 2.202(a)(5) if it finds that the public health, safety, or interest so requires or if willful conduct caused a violation of the Atomic Energy Act of 1954, as amended (AEA), an NRC regulation, license condition, or previously issued Commission order. This proposed rule would amend the regulations governing challenges to the immediate effectiveness of an order by clarifying: (1) Which party bears the burden of proof required in a hearing on a challenge to the immediate effectiveness of an order and (2) the authority of the presiding officer to call for live testimony in a hearing on a challenge to the immediate effectiveness of an order.

Geisen Proceeding

The deficiencies in the Deliberate Misconduct Rule became apparent with the parallel NRC enforcement proceeding and the DOJ criminal prosecution of David Geisen. On January 4, 2006, the NRC issued an immediately effective order to Mr. Geisen, a former employee at the Davis-Besse Nuclear Power Station, barring him from employment in the nuclear industry for 5 years.[8] The order charged Mr. Geisen with deliberate misconduct in contributing to the submission of information to the NRC that he knew was not complete or accurate in material respects. The DOJ later obtained a grand jury indictment against Mr. Geisen on charges under 10 U.S.C. 1001 of submitting false statements to the NRC.[9] In the criminal case, the judge gave the jury instructions under the prosecution's two alternative theories: the jury could find Mr. Geisen guilty if he either knew that he was submitting false statements or if he acted with deliberate ignorance of their falsity. Mr. Geisen was convicted on a general verdict; that is, the jury found Mr. Geisen guilty without making findings in regard to either of the prosecution's theories (i.e., whether Mr. Geisen knew that the statements were false or whether he acted with deliberate ignorance). The United States Court of Appeals for the Sixth Circuit upheld Mr. Geisen's conviction on appeal.[10] Because the *Geisen* jury issued a general verdict, it is unknown under which of the alternative theories the jury convicted him.

In the parallel NRC enforcement proceeding, Mr. Geisen's criminal conviction prompted the NRC's Atomic Safety and Licensing Board (the ASLB or the Board) to consider whether Mr. Geisen was collaterally estopped [11] from denying the same wrongdoing in the NRC proceeding.[12] A Board majority declined to apply collateral estoppel in the NRC proceeding due to uncertainty over whether the general jury verdict in the criminal proceeding was based on ''actual knowledge'' or ''deliberate ignorance.'' [13] In this regard, both the Board and the Commission, on appeal, found that the NRC's Deliberate Misconduct Rule did not include deliberate ignorance.[14]

The lack of certainty as to the specific basis of the jury's verdict was significant, because if the verdict was based on actual knowledge, the NRC could apply its identical actual knowledge standard based on the same facts in the criminal case.[15] Conversely, if the verdict was based on deliberate ignorance, the NRC could not apply a deliberate ignorance standard because the NRC did not have such a standard to apply. Therefore, the Commission determined that the potential that the jury convicted on a deliberate ignorance standard for which the NRC had no

[3] The term ''statement of considerations'' refers to the section of the **Federal Register** notice of a proposed rule or final rule that sets forth the NRC's rationale and justification for the rule.

[4] 56 FR 40665 (alteration added).

[5] *Id.*

[6] 56 FR 40679.

[7] *Global-Tech Appliances, Inc.* v. *SEB S.A.,* 131 S. Ct. 2060, 2068–69 (2011) (stating that defendants cannot avoid criminal liability by ''deliberately shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances''); *Id.* at 2069 *citing United States* v. *Jewell,* 532 F.2d 697, 700 (9th Cir. 1976) (en banc) (''[i]t is also said that persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts''); *United States* v. *Gullet,* 713 F.2d 1203, 1212 (6th Cir. 1983) (stating that deliberate ignorance applies when a criminal defendant ''deliberately clos[es] his eyes to the obvious risk that he is engaging in unlawful conduct'') (alteration added).

[8] *David Geisen,* LBP–09–24, 70 NRC 676 (2009), *aff'd,* CLI–10–23, 72 NRC 210 (2010).

[9] *United States* v. *Geisen,* 2008 WL 6124567 (N.D. Ohio May 2, 2008).

[10] *United States* v. *Geisen,* 612 F.3d 471, 485–86 (6th Cir. 2010), *cert. denied,* 131 S. Ct. 1813 (2011).

[11] Collateral estoppel precludes a defendant convicted in a criminal proceeding from challenging in a subsequent civil proceeding any facts that were necessary for the criminal conviction. Collateral estoppel applies to quasi-judicial proceedings such as enforcement hearings before the NRC. *See,* e.g., *SEC* v. *Freeman,* 290 F.Supp.2d 401, 405 (S.D.N.Y. 2003) (''It is settled that a party in a civil case may be precluded from relitigating issues adjudicated in a prior criminal proceeding and that the Government may rely on the collateral estoppel effect of the conviction in support of establishing the defendant's liability in the subsequent civil action.'') (citations omitted).

[12] *Geisen,* LBP–09–24, 70 NRC at 709–26.

[13] *Id.* at 715–26.

[14] The Board stated that ''the [NRC] Staff flatly and unmistakably conceded that the 'deliberate ignorance' theory is not embraced within the 'deliberate misconduct' standard that governs our proceedings.'' *Id.* at 715 (alteration added). In its decision, the Commission stated ''[t]he distinction between the court's 'deliberate ignorance' standard and the [NRC's] 'deliberate misconduct' standard applied in this case is highly significant, indeed, decisive. The Staff, when moving for collateral estoppel, itself *conceded* that 'the 6th Circuit's deliberate ignorance instruction does not meet the NRC's deliberate misconduct standard.''' *Geisen,* CLI–10–23, 72 NRC at 251 (emphasis in the original) (alteration added).

[15] *Geisen,* CLI–10–23, 72 NRC at 249.

corresponding standard to apply prohibited the NRC from applying collateral estoppel in its enforcement proceeding against Mr. Geisen.

The NRC enforcement proceeding ended in Mr. Geisen's favor, creating an anomaly: Mr. Geisen was convicted in federal court under a ''beyond a reasonable doubt'' criminal standard but exonerated before the NRC on a less demanding ''preponderance of the evidence'' standard. The Commission's *Geisen* decision made clear that the Deliberate Misconduct Rule, as presently written, does not provide for an enforcement action on the basis of deliberate ignorance.

Post-Geisen Proceeding Developments

In Staff Requirements Memoranda-SECY–10–0074, ''David Geisen, NRC Staff Petition for Review of LBP–09–24 (Aug. 28, 2009),'' dated September 3, 2010 (ADAMS Accession No. ML102460411), the Commission directed the NRC's Office of the General Counsel (OGC) to conduct a review of three issues: (1) How parallel NRC enforcement actions and DOJ criminal prosecutions affect each other, (2) issuance of immediately effective enforcement orders in matters that DOJ is also pursuing, and (3) the degree of knowledge required for pursuing violations against individuals for deliberate misconduct. In 2011, OGC conducted the previously described review. In response, in 2012, the Commission directed OGC to develop a proposed rule that would incorporate the federal standard of ''deliberate ignorance'' into the Deliberate Misconduct Rule. As part of this effort, the Commission directed OGC to examine the definitions of ''deliberate ignorance'' from all federal circuit courts to aid in developing the most appropriate definition of this term for the NRC.

The NRC is proposing this rule so that NRC enforcement proceedings and DOJ criminal prosecutions that involve similar violations are carried out in a consistent manner. The proposed rule would incorporate the concept of ''deliberate ignorance'' into the Deliberate Misconduct Rule. The NRC is also proposing this rule to clarify two aspects of the NRC's regulations regarding challenges to the immediate effectiveness of orders: (1) The burden of proof and (2) the authority of the presiding officer to order live testimony in resolving such a challenge. The burden of proof has been defined as meaning the burden of persuasion, which is the need to establish the validity of a claim or overcome opposing evidence.[16] A related concept, sometimes included within the burden of proof, is the burden of going forward with evidence, which is the need to produce enough evidence to make a case.[17]

The NRC has researched the definition of deliberate ignorance used by the Supreme Court and federal circuit courts to inform the NRC's definition of this term. In drafting the proposed amendments to 10 CFR 2.202, the NRC reviewed the way in which the ASLB has interpreted the burden of proof in hearings on challenges to the immediate effectiveness of an order. The NRC also reviewed the NRC's current regulations and practices regarding the authority of the presiding officer to call for live testimony in hearings on challenges to the immediate effectiveness of an order.

Deliberate Misconduct Rule

The NRC's predecessor agency, the Atomic Energy Commission, established the criteria used to conduct enforcement activities in 1972.[18] Early guidance did not discuss ''willfulness'' and instead advised licensees that a broad range of enforcement actions could be applied to a range of violations. In 1979, the Commission directed the NRC staff to prepare a comprehensive Enforcement Policy that applied to applicants and licensees but not to employees of applicants and licensees. The first version of the NRC Enforcement Policy, adopted in 1982, stated that the Severity Level or significance of a violation may be increased upon a finding of willfulness.[19] The NRC Enforcement Policy defined ''willfulness'' as including ''a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements.'' [20] Therefore, under the original Enforcement Policy, the NRC could have found that an applicant or licensee violated a rule, order, or license condition without regard to whether the applicant or licensee intended to commit, or knew that it was committing, a violation, but the Severity Level or significance depended, in part, on whether the violation was willful. Under the current NRC Enforcement Policy, willfulness remains a factor in assessing the Severity Level or significance of a violation (NRC Enforcement Policy, dated January 28, 2013, ADAMS Accession No. ML12340A295).

In 1990, the Commission published the proposed Deliberate Misconduct Rule to address willful misconduct by persons not licensed by the NRC.[21] Until that time, a licensee was able to dismiss an employee for willful misconduct ''either by its own decision or because the NRC formally order[ed] removal of the employee from licensed activity.'' [22] In the 1990 proposed Deliberate Misconduct Rule's statement of considerations, the Commission stated its concern that such an employee, following dismissal, could seek other nuclear-related employment without the NRC's knowledge of this employment or the new employer's knowledge of the employee's past willful misconduct.[23] The Commission also noted that ''willful acts of licensees' contractors, vendors, or their employees have caused licensees to be in violation of Commission requirements.'' [24] The purpose of the 1990 proposed Deliberate Misconduct Rule was to address unlicensed persons who are engaged in licensed activities and whose willful misconduct ''causes a licensee to be in violation of a Commission requirement or places in question the NRC's reasonable assurance of adequate protection of the public health and safety.'' [25]

Under the 1990 proposed Deliberate Misconduct Rule, an act was deemed willful if a person knew that the conduct was prohibited or exhibited a careless disregard for whether the conduct was prohibited. The 1990 proposed Deliberate Misconduct Rule described the term ''careless disregard'' as behavior that ''connotes a reckless disregard or callous . . . indifference toward one's responsibilities or the consequences of one's actions.'' [26] In the statement of considerations for the 1990 proposed Deliberate Misconduct Rule, the Commission noted that the rule would not be applied against ''conscientious people'' who simply acted negligently.[27]

The Commission published the Deliberate Misconduct Rule as a final rule on August 15, 1991 (''1991 final Deliberate Misconduct Rule'').[28] The 1991 final Deliberate Misconduct Rule promulgated the following provisions: 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b,

[16] *Director, OWCP Department of Labor* v. *Greenwich Collieries,* 512 U.S. 267, 272–81, 114 S. Ct. 2251, 2255–59 (1994).

[17] *Id.*

[18] 37 FR 21962; October 17, 1972.

[19] 47 FR 9987; March 9, 1982.

[20] *Id.* at 9990.

[21] 55 FR 12374; April 3, 1990.

[22] *Id.* at 12374 (alteration added).

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.* at 12377.

[28] 56 FR 40664.

70.10, 72.12, and 110.7b. These Deliberate Misconduct Rule provisions applied to NRC licensees, any employee of an NRC licensee, and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee.[29] These Deliberate Misconduct Rule provisions placed licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any of the Commission's requirements, or for deliberately providing to the NRC, a licensee, or contractor information that is incomplete or inaccurate in some respect material to the NRC.

In addition, the 1991 final Deliberate Misconduct Rule made conforming changes to the corresponding ''Scope'' provisions (i.e., 10 CFR 30.1, 40.2, 50.1, 60.1, 61.1, 70.2, 72.2, and 110.1) to provide express notice to all applicable persons that they would be subject to the Deliberate Misconduct Rule. Similarly, the 1991 final Deliberate Misconduct Rule amended 10 CFR 150.2, ''Scope,'' to provide notice to Agreement State licensees conducting activities under reciprocity in areas of NRC jurisdiction that they are subject to the applicable Deliberate Misconduct Rule provisions (10 CFR 30.10, 40.10, or 70.10).

The statement of considerations for the 1991 final Deliberate Misconduct Rule included the NRC's responses to public comments received on the 1990 proposed Deliberate Misconduct Rule. One group of comments raised the concern that including ''careless disregard'' as a type of willful misconduct would be a disincentive to nuclear-related employment.[30] In response to these comments, the Commission modified the rule to only apply to a person who engages in deliberate misconduct or who deliberately submits incomplete or inaccurate information, narrowing the scope of the Deliberate Misconduct Rule.[31] The Commission predicted that this narrowed scope of the rule would ''not differ significantly from the range of actions that might subject the individual to criminal prosecution.''[32] Yet, the *Geisen* enforcement proceeding and parallel criminal prosecution, previously described, indicate that the scope of the current Deliberate Misconduct Rule differs from the range of actions subject to criminal prosecution.

Immediately Effective Orders

The Commission's procedures to initiate formal enforcement action are found in the regulations set forth in 10 CFR Part 2, Subpart B. These regulations include 10 CFR 2.202, ''Orders.'' An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take another action as appropriate.[33] The Commission's statutory authority to issue an order is Section 161 of the AEA.[34] The NRC may issue orders in lieu of or in addition to civil penalties (Section 2.3.5 of the NRC Enforcement Policy (2013)). When the NRC determines that the conduct that caused a violation was willful or when the Commission determines that the public health, safety, or interest requires immediate action, the Commission may make orders immediately effective, meaning the subject of the order does not have a prior opportunity for a hearing before the order goes into effect.[35] Making enforcement orders ''immediately effective'' has been an integral part of 10 CFR 2.202 since 1962, and Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), expressly authorizes immediately effective orders.

On the same day that the Commission published the 1990 proposed Deliberate Misconduct Rule, it also published a related proposed rule that would expressly allow the Commission to issue orders to unlicensed persons, ''when such persons have demonstrated that future control over their activities subject to the NRC's jurisdiction is deemed to be necessary or desirable to protect public health and safety or to minimize danger to life or property or to protect the common defense and security.''[36] This proposed rule concerned amendments to 10 CFR 2.202 and other 10 CFR Part 2 provisions.[37] At the time of the April 1990 proposed rule, the Commission's regulations only authorized the issuance of an order to a licensee. Therefore, the intent of the 1990 proposed Deliberate Misconduct Rule and its companion April 1990 proposed rule was to establish a mechanism to issue ''an order . . . to an unlicensed person who willfully causes a licensee to be in violation of Commission requirements or whose willful misconduct undermines, or calls into question, the adequate protection of the public health and safety in connection with activities regulated by the NRC under the [AEA].''[38] These proposed changes were adopted, with some modifications, in the 1991 final Deliberate Misconduct Rule.[39] In this regard, the 1991 final Deliberate Misconduct Rule amended 10 CFR 2.202 and other provisions of 10 CFR Part 2 (i.e., 10 CFR 2.1, 2.201, 2.204, 2.700, and Appendix C to 10 CFR Part 2), which authorized the issuance of an order to unlicensed persons otherwise subject to the NRC's jurisdiction.

On July 5, 1990, the Commission published another proposed rule that would make additional changes to 10 CFR 2.202.[40] These additional changes pertained to orders that are made immediately effective. Primarily, the July 5, 1990, proposed rule would have required that challenges to immediately effective orders be heard expeditiously. The statement of considerations for the July 5, 1990, proposed rule noted that ''the Commission believes that a proper balance between the private and governmental interests involved is achieved by a hearing conducted on an accelerated basis.''[41] The statement of considerations also stated that a ''motion to set aside immediate effectiveness must be based on one or both of the following grounds: The willful misconduct charged is unfounded or the public health, safety or interest does not require the order to be made immediately effective.''[42]

In addition, the July 5, 1990, proposed rule provided the following statement regarding the respective burdens of a party filing a motion to challenge the immediate effectiveness aspect of an immediately effective order and that of the NRC staff:

> The burden of going forward on the immediate effectiveness issue is with the party who moves to set aside the immediate effectiveness provision. The burden of persuasion on the appropriateness of immediate effectiveness is on the NRC staff.[43]

After receiving public comments on the July 5, 1990, proposed rule, the Commission published a final rule on

[29] In a 1998 rulemaking, the Commission expanded the scope of the Deliberate Misconduct Rule to additional categories of persons, including applicants for NRC licenses (63 FR 1890; January 13, 1998). The 1998 rule also added new Deliberate Misconduct Rule provisions to 10 CFR Parts 52 and 71 (10 CFR 52.9 and 10 CFR 71.11). The 10 CFR Part 52 and the 10 CFR Part 71 Deliberate Misconduct Rule provisions were later redesignated as 10 CFR 52.4 and 10 CFR 71.8, respectively.

[30] 56 FR 40675.

[31] *Id.*

[32] *Id.*

[33] 10 CFR 2.202(a).

[34] 42 U.S.C. 2201.

[35] 10 CFR 2.202(b).

[36] 55 FR 12370, 12371; April 3, 1990.

[37] *Id.* at 12373–74.

[38] *Id.* at 12372.

[39] 56 FR 40664; August 15, 1991.

[40] 55 FR 27645.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 27646.

May 12, 1992.[44] The Commission acknowledged in the May 12, 1992, final rule that ''an immediately effective order may cause a person to suffer loss of employment while the order is being adjudicated'' but recognized that the effects of health and safety violations are paramount over an individual's right of employment.[45] Accordingly, the final rule amended § 2.202(c) ''to allow early challenges to the immediate effectiveness aspect of immediately effective orders.'' [46] The final rule also provided for an expedited hearing on both the merits of the immediately effective order and a challenge to set aside immediate effectiveness. The presiding officer in an immediate effectiveness challenge must dispose of the defendant's motion to set aside the immediate effectiveness of the order ''expeditiously'' (10 CFR 2.202(c)(2)(i)), generally within 15 days.[47] Therefore, the Commission struck a balance between the governmental interests in protecting public health and safety and the individual interests in fairness by requiring that challenges to immediately effective orders be heard expeditiously.

Burden of Going Forward and Burden of Persuasion

In opposing the immediate effectiveness aspect of an order, the party subject to the order, or respondent, must initiate the proceeding by filing affidavits and other evidence, which state that the order and the NRC staff's determination that it is necessary to make the order immediately effective are ''not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.'' [48] The respondent's obligation to challenge the order is known as the ''burden of going forward.'' [49] Section 2.202, however, has been interpreted to mean that the NRC staff bears the ''burden of persuasion'' to demonstrate that the order itself and the immediate effectiveness determination are supported by ''adequate evidence.'' [50] In a 2005 matter, the Board described what the NRC staff must prove and stated:

> The staff must satisfy a two-part test: it must demonstrate that adequate evidence—i.e. reliable, probative and substantial (but not preponderant) evidence—supports a conclusion that (1) the licensee violated a Commission requirement (10 C.F.R. § 2.202(a)(1)), *and* (2) the violation was 'willful,' *or* the violation poses a risk to 'the public health, safety, or interest' that requires immediate action (*id.* § 2.202(a)(5)).[51]

Although Mr. Geisen never challenged the immediate effectiveness aspect of the Commission's order (which barred him from involvement in all NRC-licensed activities for 5 years), one of the Board's judges raised the concern that 10 CFR 2.202(c)(2)(i) could be interpreted to place the burden of persuasion on the party subject to the order to show that the order is based on mere suspicion, unfounded allegations, or error.[52] This proposed rule would clarify that the burden of persuasion is the obligation of the NRC staff, not the party subject to the order.

Authority of the Presiding Officer To Order Live Testimony

The July 5, 1990, proposed rule's statement of considerations contemplated the possibility of an evidentiary hearing as part of a challenge to immediate effectiveness and stated that:

> It is expected that the presiding officer normally will decide the question of immediate effectiveness solely on the basis of the order and other filings on the record. The presiding officer may call for oral argument. However, an evidentiary hearing is to be held only if the presiding officer finds the record is inadequate to reach a proper decision on immediate effectiveness. Such a situation is expected to occur only rarely.[53]

The May 12, 1992, final rule, however, simply stated that ''[t]he presiding officer may call for oral argument but is not required to do so.'' [54] Section 2.319 outlines the presiding officer's authority to ''conduct a fair and impartial hearing according to law, and to take appropriate action to control the prehearing and hearing process, to avoid delay and maintain order,'' including the power to examine witnesses, but this power is not specified in 10 CFR 2.202.

III. Discussion of Proposed Changes

Deliberate Misconduct Rule

The NRC proposes to incorporate the concept of deliberate ignorance into the various Deliberate Misconduct Rule provisions by (1) prohibiting a person from submitting information where the person subjectively believes that there is a high probability that the information is incomplete or inaccurate but takes deliberate actions to remain ignorant of the incompleteness or inaccuracy of that information; and (2) extending the Deliberate Misconduct Rule's definition of ''deliberate misconduct by a person'' to include situations where the person subjectively believes that there is a high probability that an act or omission will cause a violation but the person takes deliberate action to avoid confirming or learning whether the act or omission will cause a violation.

In drafting this proposed rule, the NRC reviewed definitions of ''deliberate ignorance'' from the Supreme Court and all federal circuit courts to help develop the most appropriate definition of the term for the agency. In *Global-Tech Appliances, Inc.* v. *SEB S.A.,*[55] the Supreme Court found that it is reasonable to infer knowledge from willful blindness, or deliberate ignorance, as long as deliberate ignorance or willful blindness is properly defined so as not to be conflated with recklessness or negligence. In this case, the Supreme Court recognized that every Court of Appeals, with the exception of the District of Columbia Circuit, has fully embraced the theory that the knowledge requirement of criminal statutes is satisfied by either (1) actual knowledge or (2) constructive knowledge through ''deliberate ignorance'' or ''willful blindness.'' [56] The majority of Courts of Appeals make the equivalency of knowledge and deliberate ignorance or willful blindness explicit in their pattern or model jury instructions.[57]

[44] 57 FR 20194.

[45] *Id.* at 20195.

[46] *Id.* at 20194.

[47] *Id.* at 20196.

[48] 10 CFR 2.202(c)(2)(i).

[49] *United Evaluation Services, Inc.,* LBP–02–13, 55 NRC 351, 354 (2002).

[50] *Id.*

[51] *Safety Light Corp.* (Bloomsburg, Pennsylvania Site), LBP–05–02, 61 NRC 53, 61 (2005) (emphasis in the original).

[52] *Geisen,* ''Additional Views of Judge Farrar,'' LBP–09–24, 70 NRC at 801, n.12 (''To succeed under the terms of [10 CFR 2.202(c)(2)(i)], the challenge brought by the Order's target must show that 'the order, including the need for immediate effectiveness, is not based on adequate evidence but on *mere suspicion, unfounded allegations, or error.'* In addition to having the burden on immediate effectiveness, the target is apparently expected to address the merits at that point as well, as is indicated by the next sentence, which requires the challenge to 'state with particularity the reasons why the order is not based on adequate evidence' and to 'be accompanied by affidavits or other evidence relied on.' 10 C.F.R. § 2.202(c)(2)(i). All in 20 days, unless extended. *id.* § 2.202(a)(2)'') (emphasis in the original).

[53] 55 FR 27645–46.

[54] 57 FR 20196.

[55] 131 S. Ct. 2060 (2011).

[56] The term ''willful blindness'' is akin to the term ''deliberate ignorance.'' In *Global-Tech Appliances,* the Court stated that ''a willfully blind defendant is one who takes deliberate actions to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts.'' *Global-Tech Appliances,* 131 S. Ct. at 2070–71.

[57] The First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuit Courts of Appeals have incorporated willful blindness or deliberate ignorance into their pattern or model jury instructions. Pattern or model jury instructions are plain language formulations of case law that judges may provide to juries as legal explanations. These

Continued

Other Courts of Appeals have not used pattern or model jury instructions to define deliberate ignorance or willful blindness, but these courts have explained in case law that constructive knowledge may be demonstrated by a showing of deliberate ignorance or willful blindness.[58] The District of Columbia Circuit is the only federal Court of Appeals that has not embraced the theory of deliberate ignorance or willful blindness. Rather, the District of Columbia Circuit has expressed concern with the trend to equate deliberate ignorance and willful blindness with knowledge, stating that ''[i]t makes obvious sense to say that a person cannot act 'knowingly' if she does not know what is going on. To add that such a person nevertheless acts 'knowingly' if she intentionally does not know what is going on is something else again.'' [59]

The Supreme Court recognized the District of Columbia Circuit's decision not to embrace fully the deliberate ignorance or willful blindness standard in *Global-Tech Appliances,* yet the Supreme Court still found that it is reasonable to infer knowledge from deliberate ignorance or willful blindness. The Court stated that ''while the Courts of Appeals articulate the doctrine of willful blindness in slightly different ways, all appear to agree on two basic requirements: (1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact.'' [60] According to the Supreme Court, the standard of deliberate ignorance or willful blindness surpasses the standards of recklessness and negligence such that a willfully blind defendant ''can almost be said to have actual knowledge of the critical facts.'' [61] Therefore, deliberate ignorance or willful blindness satisfies the knowledge requirement of criminal statutes.

In this proposed rule, the NRC would amend the Deliberate Misconduct Rule to incorporate ''deliberate ignorance'' as an additional basis on which to take enforcement action against persons who violate the rule. Such an amendment would therefore allow the Commission and the ASLB to apply collateral estoppel, if appropriate, in future NRC enforcement proceedings and would avoid anomalies like the outcome of the *Geisen* case.

Immediately Effective Orders

This proposed rule would amend 10 CFR 2.202(c)(2) to clarify that in any challenge to the immediate effectiveness of an order, the NRC staff bears the burden of persuasion; whereas the party challenging the order bears the burden of going forward.[62] Specifically, the proposed amendment would state that the NRC staff must show that (1) adequate evidence supports the grounds for the order and (2) immediate effectiveness is warranted.[63]

This proposed rule would further amend 10 CFR 2.202(c)(2) to confirm the presiding officer's authority to order live testimony, including cross examination of witnesses, in hearings on challenges to the immediate effectiveness of orders, if the presiding officer concludes that taking live testimony would assist in its decision on the motion. Similarly, the proposed rule would allow any party to the proceeding to file a motion requesting the Board to order live testimony. The proposed amendments would allow the NRC staff, in cases where the presiding officer orders live testimony, the option of presenting its response through live testimony rather than a written response made within 5 days of its receipt of the motion. The NRC does not anticipate that permitting the presiding officer to allow live testimony would cause delay, and even if it were to cause delay, public health and safety would not be prejudiced because the immediately effective order would remain in effect throughout the hearing.

The proposed rule would also amend 10 CFR 2.202(c)(2) to clarify that the presiding officer shall conduct any live testimony pursuant to 10 CFR 2.319, except that no subpoenas, discovery, or referred rulings or certified questions to the Commission shall be permitted for this purpose. Finally, the proposed rule would amend 10 CFR 2.202(c)(2) by dividing the paragraph into smaller paragraphs, adding a cross reference to 10 CFR 2.202(a)(5), which is the regulation that authorizes the Commission to make an order immediately effective, and making other minor edits to improve clarity and readability.

Conforming Amendments

The NRC regulation, 10 CFR 150.2, ''Scope,'' provides notice to Agreement State licensees conducting activities under reciprocity in areas of NRC jurisdiction that they are subject to the applicable NRC Deliberate Misconduct Rule provisions. When the NRC first promulgated the Deliberate Misconduct Rule in 1991, it failed to list 10 CFR 61.9b as a cross reference in 10 CFR 150.2 (at the time, 10 CFR 150.2 listed 10 CFR 30.10, 40.10, and 70.10 as the Deliberate Misconduct Rule provisions applicable to Agreement State licensees conducting activities under reciprocity in areas of NRC jurisdiction).

When first promulgated on January 13, 1998, the NRC designated the 10 CFR Part 71 Deliberate Misconduct Rule provision as 10 CFR 71.11; [64] the NRC made the appropriate conforming amendment to 10 CFR 150.2, by listing 10 CFR 71.11 as a cross reference.[65] The NRC later redesignated the provision as 10 CFR 71.8,[66] but did not make a conforming amendment to update the cross-reference in 10 CFR 150.2. The current 10 CFR 150.2 provision still lists the 10 CFR Part 71 Deliberate Misconduct Rule provision as 10 CFR 71.11.

This proposed rule would make the appropriate conforming changes to 10 CFR 150.2 by adding a cross reference to 10 CFR 61.9b and deleting the cross reference to 10 CFR 71.11 and replacing it with 10 CFR 71.8.

IV. Section-by-Section Analysis

Deliberate Misconduct Rule Changes

This proposed rule would amend the following Deliberate Misconduct Rule regulations: 10 CFR 30.10, 40.10, 50.5, 52.4, 60.11, 61.9b, 63.11, 70.10, 71.8, 72.12, 76.10, and 110.7b. The language of these regulations is similar, and in many instances, identical. The differences in language typically relate to the categories of persons or other entities being regulated by that regulation. Other than 10 CFR 52.4 and 10 CFR 71.8, the format of these regulations is the same.

The proposed rule would revise paragraph (a)(2) of 10 CFR 30.10, 40.10,

jury instructions are given legal weight through their use in trials and subsequent approval of that use on appeal.

[58] The Second Circuit, *see,* e.g., *United States* v. *Coplan,* 703 F.3d 46 (2d Cir. 2012), and Fourth Circuit, *see,* e.g., *United States* v. *Poole,* 640 F.3d 114 (4th Cir. 2011), have applied deliberate ignorance or willful blindness in case law.

[59] *United States* v. *Alston-Graves,* 435 F.3d 331, 337 (D.C. Cir. 2006).

[60] *Global-Tech Appliances,* 131 S. Ct. at 2070 (citations omitted).

[61] *Id.* at 2070–71.

[62] The party challenging the order has the obligation to initiate the proceeding, namely, by filing the appropriate motion under 10 CFR 2.202(c)(2)(i). This motion ''must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.'' 10 CFR 2.202(c)(2)(i).

[63] The Administrative Procedure Act provides ''[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.'' 5 U.S.C. 556(d).

[64] 63 FR 1899.

[65] 63 FR 1901.

[66] In a 2004 rulemaking amending its regulations concerning the packaging and transport of radioactive materials, the NRC renumbered 10 CFR 71.11 to 10 CFR 71.8 (69 FR 3698, 3764, and 3790; January 26, 2004).

50.5, 60.11, 61.9b, 63.11, 70.10, 72.12, 76.10, and 110.7b; paragraph (c)(2) of 10 CFR 52.4; and paragraph (b)(2) of 10 CFR 71.8 to add a clause that expressly prohibits the deliberate submission of information to the NRC or other specified entity or individual when the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information. The clause added by the proposed rule would be designated as paragraph (c)(2)(ii) for 10 CFR 52.4, paragraph (b)(2)(ii) of 10 CFR 71.8, and paragraph (a)(2)(ii) for all other Deliberate Misconduct Rule regulations. The proposed rule will designate the existing prohibition, on the deliberate submission of information to the NRC or other specified entity or individual when the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC, as paragraph (c)(2)(i) for 10 CFR 52.4, paragraph (b)(2)(i) of 10 CFR 71.8, and paragraph (a)(2)(i) for all other Deliberate Misconduct Rule regulations.

The proposed rule would revise paragraph (c) of 10 CFR 30.10, 40.10, 50.5, 60.11, 61.9b, 63.11, 70.10, 72.12, 76.10, and 110.7b. Paragraph (c) defines the term ''deliberate misconduct.'' Specifically, the proposed rule would revise the introductory text of paragraph (c) and the language of paragraphs (c)(1)–(2). These revisions are editorial in nature and support, in terms of readability and clarity, the addition of a new paragraph (c)(3). New paragraph (c)(3) would expand the definition of ''deliberate misconduct'' to include an intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

Similarly, the proposed rule would revise paragraph (b) of 10 CFR 52.4 and paragraph (d) of 10 CFR 71.8; these paragraphs define the term ''deliberate misconduct'' for those regulations. The proposed rule would revise the introductory text of paragraph (b) and the language of paragraphs (b)(i)–(ii) for 10 CFR 52.4, and the introductory text of paragraph (d) and the language of paragraphs (d)(1)–(2) for 10 CFR 71.8. These revisions are editorial in nature and support, in terms of readability and clarity, the addition of a new paragraph (b)(iii), for 10 CFR 52.4, and the addition of a new paragraph (d)(3), for 10 CFR 71.8. New paragraphs, 10 CFR 52.4(b)(iii) and 10 CFR 71.8(d)(3), would expand the definition of ''deliberate misconduct'' to include an intentional act or omission that the person subjectively believes has a high probability of causing a violation, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

Immediate Effectiveness of Orders Rule Changes

Section 2.202

The proposed rule would make several changes to 10 CFR 2.202(c)(2)(i). The proposed rule would revise 10 CFR 2.202(c)(2)(i) by dividing it into several smaller paragraphs. The proposed rule would revise 10 CFR 2.202(c)(2)(i) to include only the first two sentences of the current 10 CFR 2.202(c)(2)(i), which concern the right of the party subject to an immediately effective order to challenge the immediate effectiveness of that order. The proposed rule would further revise the first sentence to add a cross reference to 10 CFR 2.202(a)(5) and make other minor, clarifying editorial changes to that sentence.

The proposed rule would add a new paragraph, 10 CFR 2.202(c)(2)(ii), which would allow any party to file a motion with the presiding officer requesting that the presiding officer order live testimony. The proposed new 10 CFR 2.202(c)(2)(ii) would also authorize the presiding officer, on its own motion, to order live testimony.

The proposed rule would redesignate the third sentence of the current 10 CFR 2.202(c)(2)(i) as a new paragraph, 10 CFR 2.202(c)(2)(iii), which would concern the staff's response to a motion challenging the immediate effectiveness of an order. The proposed 10 CFR 2.202(c)(2)(iii) would authorize the NRC staff to present its response through live testimony rather than a written response in those cases where the presiding officer orders live testimony.

The proposed rule would add a new paragraph, 10 CFR 2.202(c)(2)(iv), which provides that the presiding officer shall conduct any live testimony pursuant to 10 CFR 2.319.

The proposed rule would make a minor clarifying change to 10 CFR 2.202(c)(2)(ii) and redesignate that paragraph as 10 CFR 2.202(c)(2)(v).

The proposed rule would add a new paragraph, 10 CFR 2.202(c)(2)(vi), which would clarify that the licensee or other person challenging the immediate effectiveness of an order bears the burden of going forward, whereas the NRC staff bears the burden of persuasion that adequate evidence supports the grounds for the immediately effective order and that immediate effectiveness is warranted.

The proposed rule would make minor clarifying changes to the fourth and fifth sentences of 10 CFR 2.202(c)(2)(i), which direct the presiding officer's expeditious disposition of the motion to set aside immediate effectiveness and prohibit the presiding officer from staying the immediate effectiveness of the order, respectively, and redesignate those sentences as a new paragraph, 10 CFR 2.202(c)(2)(vii).

The proposed rule would make minor clarifying changes to the eighth sentence of 10 CFR 2.202(c)(2)(i), and would redesignate the sixth, seventh, and eighth sentences of the 10 CFR 2.202(c)(2)(i) as a new paragraph, 10 CFR 2.202(c)(2)(viii). These sentences concern the direction to the presiding officer to uphold the immediate effectiveness of the order upon finding adequate evidence to support immediate effectiveness, the final agency action status of an order upholding immediate effectiveness, and the prompt referral by the presiding officer of an order setting aside immediate effectiveness to the Commission and that such order will not be effective pending further order of the Commission, respectively.

Conforming Amendments to 10 CFR 150.2

This proposed rule would revise the last sentence of 10 CFR 150.2 by adding a cross reference to 10 CFR 61.9b and deleting the cross reference to 10 CFR 71.11 and replacing it with 10 CFR 71.8.

Administrative Changes to Authority Citations

The authority citations for 10 CFR Parts 2, 30, 60, 61, 63, 71, 72, 76, 110, and 150 would be revised to make editorial changes that are administrative in nature, including inserting missing parentheses and punctuation. The proposed revisions would not change the statutory authority.

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). In complying with this directive, proposed editorial changes have been made to the various NRC regulations that are the subject of this proposed

rule. These editorial changes, if promulgated, will improve the organization and readability of these regulations. These types of changes are not discussed further in this document. The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is proposing to amend its Deliberate Misconduct Rule and two aspects of challenges to the immediate effectiveness of NRC enforcement orders: (1) The burden of proof and (2) the authority of the presiding officer to order live testimony in resolving such a challenge. This action does not constitute the establishment of a government-unique standard as defined in Office of Management and Budget (OMB) Circular A–119 (1998).

VII. Environmental Impact: Categorical Exclusion

The NRC has determined that the issuance of this proposed rule relates to enforcement matters and, therefore, falls within the scope of 10 CFR 51.10(d). In addition, the NRC has determined that the issuance of this proposed rule is a type of action described in categorical exclusions 10 CFR 51.22(c)(1)–(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rulemaking.

VIII. Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by OMB, approval numbers 3150–0017, –0020, –0011, –0151, –0127, –0135, –0199, –0009, –0008, –0132, and –0036.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

The proposed rule would amend the NRC's Deliberate Misconduct Rule regulations to incorporate the concept of deliberate ignorance as an additional basis on which to take enforcement action and to make clarifications to the NRC regulations governing hearings on challenges to the immediate effectiveness of orders. In addition, the proposed rule would make minor, conforming amendments to 10 CFR 150.2. These proposed amendments, if promulgated, do not result in a cost to the NRC and do not result in a cost to licensees or others who would comply with the proposed amendments. These amendments would accrue a benefit by aligning NRC enforcement proceedings with criminal proceedings, making NRC enforcement proceedings more efficient. The amendments to the rule governing hearings on challenges to immediate effectiveness of orders would not change the existing processes but would merely clarify the rule. These amendments would not result in a cost to the NRC or to respondents in hearings on challenges to immediate effectiveness of orders but a benefit would accrue to the extent that potential confusion over the meaning of the NRC's regulations is removed. The NRC believes that the proposed rule would improve the efficiency of NRC enforcement proceedings without imposing costs on either the NRC or on participants in such proceedings.

X. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the NRC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect small businesses as they are defined in Section 3 of the Small Business Act, 15 U.S.C. 632, and the standards set forth in 13 CFR Part 121, and within the size standards established by the NRC (10 CFR 2.810). However, this proposed rule would not have a significant economic impact on these entities because (1) the amendments to the Deliberate Misconduct Rule do not impose any costs of compliance and (2) the proposed amendments to the rules governing hearings on immediate effectiveness of orders do not impose additional costs and would improve the efficiency of these hearings by clarifying the rules governing these hearings.

XI. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this proposed rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the proposed rule in accordance with the procedure established within Part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

The NRC program elements (including regulations) are placed into four compatibility categories (See the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A program elements are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B program elements apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C program elements do not meet the criteria of Category A or B but contain the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D program elements do not meet any of the criteria of Category A, B, or C and, therefore, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) program elements are not required for compatibility but are identified as

having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC program elements address areas of regulation that cannot be relinquished to Agreement States under the AEA, or the provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that will be revised and their corresponding categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.'' If the NRC promulgates the proposed rule's amendments in a final rule, the Agreement States have 3 years from the final rule's effective date, as noted in the **Federal Register**, to adopt compatible regulations.

TABLE 1—COMPATIBILITY TABLE FOR PROPOSED RULE

Section	Change	Subject	Compatibility	
			Existing	New
Part 2				
2.202(c)	Revised	Orders.	NRC	NRC.
Part 30				
30.10(a) and (c)	Revised	Deliberate misconduct.	C	C.
Part 40				
40.10(a) and (c)	Revised	Deliberate misconduct.	C	C.
Part 50				
50.5(a) and (c)	Revised	Deliberate misconduct.	NRC	NRC.
Part 52				
52.4(b) and (c)	Revised	Deliberate misconduct.	NRC	NRC.
Part 60				
60.11(a) and (c)	Revised	Deliberate misconduct.	NRC	NRC.
Part 61				
61.9b(a) and (c)	Revised	Deliberate misconduct.	C	C.
Part 63				
63.11(a) and (c)	Revised	Deliberate misconduct.	NRC	NRC.
Part 70				
70.10(a) and (c)	Revised	Deliberate misconduct.	C	C.
Part 71				
71.8(b) and (d)	Revised	Deliberate misconduct.	C	C.
Part 72				
72.12(a) and (c)	Revised	Deliberate misconduct.	NRC	NRC.
Part 76				
76.10(a) and (c)	Revised	Deliberate misconduct.	NRC	NRC.
Part 110				
110.7b(a) and (c)	Revised	Deliberate misconduct.	NRC	NRC.
Part 150				
150.2	Revised	Deliberate misconduct.	D	D.

XII. Backfitting and Issue Finality

The proposed rule would revise the Deliberate Misconduct Rule as it appears in various sections of 10 CFR Chapter I. The proposed rule would revise the Deliberate Misconduct Rule by incorporating the concept of deliberate ignorance as an additional basis on which to take enforcement action against persons who violate the rule. The proposed rule would also revise the immediate effectiveness provisions at 10 CFR 2.202 to state that the respondent bears the burden of going forward with evidence to challenge immediate effectiveness and the NRC staff bears the burden of persuasion on whether adequate evidence supports immediate effectiveness. The proposed rule would also revise 10 CFR 2.202 to clarify that the presiding officer is permitted to order live testimony, either by its own motion, or upon the motion of any party to the proceeding.

The proposed revisions to the Deliberate Misconduct Rule would clarify the NRC's prohibition of deliberate misconduct to provide notice of proscribed conduct to all affected persons. These revisions would not change, modify, or affect the design, procedures, or regulatory approvals protected under the various NRC backfitting and issue finality provisions. Accordingly, the proposed revisions to the Deliberate Misconduct Rule, if promulgated as a final rule, would not represent backfitting imposed on any entity protected by the backfitting provisions in 10 CFR Parts 50, 70, 72, or 76, nor would the proposed revisions be inconsistent with any issue finality provision in 10 CFR Part 52.

The proposed revisions to 10 CFR 2.202 would clarify the agency's adjudicatory procedures with respect to challenges to immediate effectiveness of orders. These revisions would not change, modify, or affect the design, procedures, or regulatory approvals protected under the various NRC backfitting and issue finality provisions. Accordingly, the proposed revisions to the adjudicatory procedures, if adopted in final form, would not represent backfitting imposed on any entity protected by backfitting provisions in 10 CFR Parts 50, 70, 72, or 76, nor would the proposed revisions be inconsistent with any issue finality provision in 10 CFR Part 52.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to amend 10 CFR parts 2, 30, 40, 50, 52, 60, 61, 63, 70, 71, 72, 76, 110, and 150 as follows:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: Atomic Energy Act secs. 161, 181, 191 (42 U.S.C. 2201, 2231, 2241); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); 5 U.S.C. 552; Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note).

Section 2.101 also issued under Atomic Energy Act secs. 53, 62, 63, 81, 103, 104 (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134,

2135); Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10143(f)); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Energy Reorganization Act sec. 301 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under Atomic Energy Act secs. 102, 103, 104, 105, 183i, 189 (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200–2.206 also issued under Atomic Energy Act secs. 161, 186, 234 (42 U.S.C. 2201(b),(i),(o), 2236, 2282); sec. 206 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, as amended by section 3100(s), Pub. L. 104–134 (28 U.S.C. 2461 note). Subpart C also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under Nuclear Waste Policy Act secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102 (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553; Atomic Energy Act sec. 29 (42 U.S.C. 2039). Subpart K also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154). Subpart L also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239). Subpart M also issued under Atomic Energy Act secs. 184, 189 (42 U.S.C. 2234, 2239). Subpart N also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239).

■ 2. In § 2.202, revise paragraph (c)(2) to read as follows:

§ 2.202 Orders.

* * * * *

(c) * * *

(2)(i) The licensee or other person to whom the Commission has issued an immediately effective order in accordance with paragraph (a)(5) of this section may, in addition to demanding a hearing, at the time the answer is filed or sooner, file a motion with the presiding officer to set aside the immediate effectiveness of the order on the ground that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

(ii) Any party may file a motion with the presiding officer requesting that the presiding officer order live testimony. Any motion for live testimony must be made in conjunction with the motion to set aside the immediate effectiveness of the order or any party's response thereto. The presiding officer may, on its own motion, order live testimony. The presiding officer's basis for approving any motion for, or ordering on its own motion, live testimony shall be that taking live testimony would assist in its decision on the motion to set aside the immediate effectiveness of the order.

(iii) In cases where the presiding officer orders live testimony, the NRC staff may present its response through live testimony or by a written response; if the NRC staff chooses to respond in writing, it shall respond within 5 days of the receipt of the presiding officer's order granting live testimony. Otherwise, the NRC staff shall respond in writing within 5 days of the receipt of a motion to set aside the immediate effectiveness of the order that does not include a motion to order live testimony or the presiding officer's order denying a motion for live testimony.

(iv) The presiding officer shall conduct any live testimony pursuant to § 2.319, except that no subpoenas, discovery, or referred rulings or certified questions to the Commission shall be permitted for this purpose.

(v) The presiding officer may, on motion by the staff or any other party to the proceeding, where good cause exists, delay the hearing on the immediately effective order at any time for such periods as are consistent with the due process rights of the licensee or other person and other affected parties.

(vi) The licensee or other person to whom the Commission has issued an immediately effective order bears the burden of going forward with evidence that the immediately effective order is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. The NRC staff bears the burden of persuading the presiding officer that adequate evidence supports the grounds for the immediately effective order and immediate effectiveness is warranted.

(vii) The presiding officer must issue a decision on the motion to set aside the immediate effectiveness of the order expeditiously. During the pendency of the motion to set aside the immediate effectiveness of the order or at any other time, the presiding officer may not stay the immediate effectiveness of the order, either on its own motion, or upon motion of the licensee or other person.

(viii) The presiding officer will uphold the immediate effectiveness of the order upon finding adequate evidence to support immediate effectiveness. An order upholding immediate effectiveness will constitute the final agency action on immediate effectiveness. The presiding officer will promptly refer an order setting aside immediate effectiveness to the Commission and such order setting aside immediate effectiveness will not be effective pending further order of the Commission.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 3. The authority citation for part 30 is revised to read as follows:

Authority: Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 4. In § 30.10, revise paragraphs (a)(2) and (c) to read as follows:

§ 30.10 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, a certificate holder, an applicant, or a licensee's, certificate holder's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee, certificate holder or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of

this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 5. The authority citation for part 40 continues to read as follows:

Authority: Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 6. In § 40.10, revise paragraphs (a)(2) and (c) to read as follows:

§ 40.10 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 7. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act secs. 102, 103, 104, 105, 147, 149, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2135, 2167, 2169, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Nuclear Waste Policy Act sec. 306 (42 U.S.C. 10226); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 50.10 also issued under Atomic Energy Act secs. 101, 185 (42 U.S.C. 2131, 2235); National Environmental Policy Act sec. 102 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under Atomic Energy Act sec. 185 (42 U.S.C. 2235). Appendix Q also issued under National Environmental Policy Act sec. 102 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415 (42 U.S.C. 2239). Section 50.78 also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

■ 8. In § 50.5, revise paragraphs (a)(2) and (c) to read as follows:

§ 50.5 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 9. The authority for part 52 continues to read as follows:

Authority: Atomic Energy Act secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2201, 2167, 2169, 2232, 2233, 2235, 2236, 2239, 2282); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 10. In § 52.4, revise paragraphs (b) and (c)(2) to read as follows:

§ 52.4 Deliberate misconduct.

* * * * *

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

Deliberate misconduct by a person or entity means:

(i) An intentional act or omission that the person or entity knows would cause a licensee or an applicant for a license, standard design certification, or standard design approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license, standard design certification, or standard design approval issued by the Commission;

(ii) An intentional act or omission that the person or entity knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, holder of a standard design approval, applicant for a license, standard design certification, or standard design approval, or contractor or subcontractor; or

(iii) An intentional act or omission that the person or entity subjectively believes has a high probability of causing a violation described in paragraph (i) or (ii) of this definition,

but the person or entity takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

(c) * * *

(2) Deliberately submit to the NRC; a licensee, an applicant for a license, standard design certification or standard design approval; or a licensee's, standard design approval holder's, or applicant's contractor or subcontractor, information:

(i) That the person or entity submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person or entity submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

PART 60—DISPOSAL OF HIGH–LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

■ 11. The authority citation for part 60 is revised to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 223, 234 (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206, 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5841, 5842, 5846, 5851); sec. 14, Pub. L. 95–601 (42 U.S.C. 2021a); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 114, 117, 121 (42 U.S.C. 10134, 10137, 10141); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 12. In § 60.11, revise paragraphs (a)(2) and (c) to read as follows:

§ 60.11 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 13. The authority citation for part 61 is revised to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 65, 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846), sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Pub. L. 95–601, secs. 10, 14, 92 Stat. 2951, 2953 (42 U.S.C. 2021a, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 14. In § 61.9b, revise paragraphs (a)(2) and (c) to read as follows:

§ 61.9b Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

■ 15. The authority citation for part 63 is revised to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 62, 63, 65, 81, 161, 182, 183 (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); sec 14, Pub. L. 95–601 (42 U.S.C. 2021a); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 114, 117, 121 (42 U.S.C. 10134, 10137, 10141); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

■ 16. In § 63.11, revise paragraphs (a)(2) and (c) to read as follows:

§ 63.11 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any

term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 17. The authority citation for part 70 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 161, 182, 183, 193, 223, 234 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2243, 2273, 2282, 2297f); secs. 201, 202, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)).

Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237).

Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

■ 18. In § 70.10, revise paragraphs (a)(2) and (c) to read as follows:

§ 70.10 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 19. The authority citation for part 71 is revised to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

■ 20. In § 71.8, revise paragraphs (b)(2) and (d) to read as follows:

§ 71.8 Deliberate misconduct.

* * * * *

(b) * * *

(2) Deliberately submit to the NRC, a licensee, a certificate holder, a quality assurance program approval holder, an applicant for a license, certificate or quality assurance program approval, or a licensee's, applicant's, certificate holder's, or quality assurance program approval holder's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(d) For the purposes of paragraph (b)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee, certificate holder, quality assurance program approval holder, or applicant for a license, certificate, or quality assurance program approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or certificate issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, quality assurance program approval holder, applicant, or the contractor or subcontractor of any of them; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (d)(1) or (d)(2) of this section but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 21. The authority citation for part 72 is revised to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act sec. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act sec. 102 (42 U.S.C. 4332); Nuclear Waste Policy Act secs. 131, 132, 133, 135, 137, 141 148 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 72.44(g) also issued under secs. Nuclear Waste Policy Act 142(b) and 148(c), (d) (42 U.S.C. 10162(b), 10168(c), (d)).

Section 72.46 also issued under Atomic Energy Act sec. 189 (42 U.S.C. 2239); Nuclear Waste Policy Act sec. 134 (42 U.S.C. 10154).

Section 72.96(d) also issued under Nuclear Waste Policy Act sec. 145(g) (42 U.S.C. 10165(g)).

Subpart J also issued under Nuclear Waste Policy Act secs. 117(a), 141(h) (42 U.S.C. 10137(a), 10161(h)).

Subpart K is also issued under sec. 218(a) (42 U.S.C. 10198).

■ 22. In § 72.12, revise paragraphs (a)(2) and (c) to read as follows:

§ 72.12 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, a certificate holder, an applicant for a license or certificate, or a licensee's, applicant's, or certificate holder's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee, certificate holder or applicant for a license or certificate to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or certificate issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

■ 23. The authority citation for part 76 is revised to read as follows:

Authority: Atomic Energy Act secs. 161, 223, 234, 1312, 1701 (42 U.S.C. 2201, 2273, 2282, 2297b-11, 2297f); Energy Reorganization Act secs. 201, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 76.22 also issued under Atomic Energy Act sec. 193(f) (42 U.S.C. 2243(f)). Section 76.35(j) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

■ 24. In § 76.10, revise paragraphs (a)(2) and (c) to read as follows:

§ 76.10 Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, the Corporation, or its contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause the Corporation to be in violation of any rule, regulation, or order, or any term, condition, or limitation of a certificate or approved compliance plan issued by the Director;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of the Corporation, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 25. The authority citation for part 110 is revised to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 223, 234 (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841; Solar, Wind, Waste, and Geothermal Power Act of 1990 sec. 5 (42 U.S.C. 2243); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, 119 Stat. 594.

Sections 110.1(b)(2) and 110.1(b)(3) also issued under 22 U.S.C. 2403. Section 110.11 also issued under Atomic Energy Act secs. 54(c), 57(d), 122 (42 U.S.C. 2074, 2152). Section 110.50(b)(3) also issued under Atomic Energy Act sec. 123 (42 U.S.C. 2153). Section 110.51 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 110.52 also issued under Atomic Energy Act sec. 186 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under Intelligence Authorization Act sec. 903 (42 U.S.C. 2151 *et seq.*).

■ 26. In § 110.7b, revise paragraphs (a)(2) and (c) to read as follows:

§ 110.7b Deliberate misconduct.

(a) * * *

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information:

(i) That the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC; or

(ii) When the person submitting the information subjectively believes that there is a high probability that the information submitted is incomplete or inaccurate in some respect material to the NRC but takes deliberate action to remain ignorant of the incompleteness or inaccuracy of that information.

* * * * *

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means:

(1) An intentional act or omission that the person knows would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission;

(2) An intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor; or

(3) An intentional act or omission that the person subjectively believes has a high probability of causing a violation described in paragraph (c)(1) or (c)(2) of this section, but the person takes deliberate action to remain ignorant of whether the act or omission causes or would have caused, if not detected, such a violation.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

■ 27. The authority citation for part 150 is revised to read as follows:

Authority: Atomic Energy Act secs. 161, 181, 223, 234 (42 U.S.C. 2201, 2021, 2231, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under Atomic Energy Act

secs. 11e(2), 81, 83, 84 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under Atomic Energy Act sec. 53 (42 U.S.C. 2073).

Section 150.15 also issued under Nuclear Waste Policy Act sec. 135 (42 U.S.C. 10155). Section 150.17a also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 150.30 also issued under Atomic Energy Act sec. 234 (42 U.S.C. 2282).

■ 28. In § 150.2, revise the last sentence to read as follows:

§ 150.2 Scope.

* * * This part also gives notice to all persons who knowingly provide to any licensee, applicant for a license or certificate or quality assurance program approval, holder of a certificate or quality assurance program approval, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of §§ 30.10, 40.10, 61.9b, 70.10, and 71.8.

Dated at Rockville, Maryland, this 30th day of January 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2014–02570 Filed 2–10–14; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2013–BT–TP–0002]

RIN 1904–AC93

Energy Conservation Program: Test Procedures for Commercial Clothes Washers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its test procedures and certification reporting requirements for commercial clothes washers established under the Energy Policy and Conservation Act. The proposed amendments provide numerical equations for translating modified energy factor and water factor values as measured using DOE's new clothes washer test procedure into their equivalent values as measured using the current test procedure. The proposed amendments also clarify the dates for which the current and new test procedures can be used to determine compliance with existing energy conservation standards and any future revised energy conservation standards for commercial clothes washers.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than April 28, 2014 See section V, ''Public Participation,'' for details. DOE will hold a public meeting on this proposed test procedure if one is requested by February 26, 2014.

ADDRESSES: Any comments submitted must identify the NOPR for Test Procedures for Commercial Clothes Washers, and provide docket number EERE–2013–BT–TP–0002 and/or regulatory information number (RIN) number 1904–AC93. Comments may be submitted using any of the following methods:

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

2. *Email:* CCW2013TP0002@ee.doe.gov Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *commercial_clothes_washers@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq;* ''EPCA''), Public Law 94–163, sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act, Pub. L. 112–210 (Dec. 18, 2012)). Part C of title III, which for editorial reasons was re-designated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317, as codified), establishes the ''Energy Conservation Program for Certain Industrial Equipment.'' The program includes commercial clothes washers, the subject

of today's proposed rulemaking. (42 U.S.C. 6311(1)(H))

Under EPCA, the energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

The Energy Policy Act of 2005 (EPACT) established the first energy conservation standards for commercial clothes washers. (42 U.S.C. 6313(e)(1)) EPACT directed DOE to conduct two rulemakings to determine whether the established standards should be amended. DOE published its first final rule amending commercial clothes washer standards on January 8, 2010 (''January 2010 final rule''), which applies to commercial clothes washers manufactured on or after January 8, 2013. EPACT required the second final rule to be published by January 1, 2015. Any amended standards would apply to commercial clothes washers manufactured three years after the date on which the final amended standard is published. (42 U.S.C. 6313(e)(2)(B)) DOE is currently conducting its second standards rulemaking to satisfy this requirement.[1]

The commercial clothes washer standards established by the January 2010 final rule are based on energy and water metrics as measured using the DOE test procedure for both residential and commercial clothes washers at 10 CFR part 430, subpart B, appendix J1 (''appendix J1''). On March 7, 2012, DOE published a final rule amending its test procedures for clothes washers (''March 2012 final rule''). (77 FR 13888) The March 2012 final rule included minor amendments to appendix J1 and also established a new test procedure at 10 CFR part 430, subpart B, appendix J2 (''appendix J2''). Beginning March 7, 2015, manufacturers of residential clothes washers will be required to use appendix J2 to demonstrate compliance with standards. Beginning March 7, 2015, manufacturers of commercial clothes washers may use either appendix J1 or appendix J2 to demonstrate compliance with the current standards established by the January 2010 final rule. Manufacturers using appendix J2 would be required to use the conversion equations proposed in this NOPR to translate the measured efficiency metrics into equivalent appendix J1 values. The use of appendix J2 would be required to demonstrate compliance with any amended energy conservation standards to be published in a final rule by January 1, 2015, and the conversion equations would no longer be used at that time.

In today's proposed rule, DOE proposes to amend its test procedure and certification reporting requirements for commercial clothes washers as described in section II. Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b)(2))

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes amending its test procedure and certification reporting requirements for commercial clothes washers by adding equations for translating modified energy factor (MEF) and water factor (WF) values as measured using appendix J2 into their equivalent values as measured using appendix J1. This translation would be required for manufacturers that make representations of energy efficiency (including representations in certification reports) based on testing conducted in accordance with appendix J2 before the effective date of any amended standards to be published in a final rule by January 1, 2015.

DOE also proposes to amend the definitions for commercial clothes washers in 10 CFR 430.152 to clarify the nomenclature used to differentiate the energy and water efficiency metrics in appendix J1 and appendix J2, as applicable to commercial clothes washers.

Finally, DOE also responds to comments from interested parties regarding the commercial clothes washer test procedure that DOE received in response to the framework document and public meeting for the energy conservation standards rulemaking for commercial clothes washers.[2]

III. Discussion

As described in section I, the March 2012 final rule established a new test procedure at appendix J2, which is required to be used for residential clothes washers beginning March 7, 2015, to demonstrate compliance with amended energy conservation standards for residential clothes washers. Beginning March 7, 2015, manufacturers of commercial clothes washers may also use appendix J2 to demonstrate compliance with current energy conservation standards for commercial clothes washers.

Both appendix J1 and appendix J2 contain provisions for calculating MEF and WF. In today's rule, DOE proposes to provide numerical equations for translating the MEF and WF values calculated using appendix J2 into their equivalent appendix J1 values. Manufacturers would be required to use these equations when testing pursuant to the appendix J2 test procedure to demonstrate compliance with the current commercial clothes washer standards, which are based on MEF and WF values as measured using appendix J1. DOE also proposes new designations for the appendix J2 metrics: (1) MEF_{J2}, defined as the modified energy factor value calculated in section 4.5 of appendix J2, and (2) WF_{J2}, defined as the water factor value calculated in section 4.2.12 of appendix J2. These new metric designations would be codified at 10 CFR 431.152. The translation equations would be codified within the certification requirements at 10 CFR 429.46(b). DOE also proposes to amend section 429.46 to clarify that beginning March 7, 2015, manufacturers may use either appendix J1 or, alternatively, appendix J2 in conjunction with the proposed translation equations, to demonstrate compliance with existing energy

[1] Docket number EERE–2012–BT–STD–0020. For more information, see DOE's commercial clothes washer rulemaking Web page at *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/46.*

[2] The framework document for the energy conservation standards rulemaking for commercial clothes washers is available at DOE's rulemaking Web page: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/56.* All rulemaking documents, including comments from interested parties, are also available at *www.regulations.gov,* under Docket #EERE–2012–BT–STD–0020.

conservation standards for commercial clothes washers. Appendix J2 would be required to demonstrate compliance with any amended standards based on appendix J2 efficiency metrics, and the conversion equations would not be used at that time.

The proposed equations for translating MEF and WF values measured under appendix J2 to equivalent appendix J1 values were obtained as described in the discussion that follows.

A. Top-Loading Translation Equations

DOE tested a representative sample of top-loading commercial clothes washers currently on the market to determine the MEF and WF equations. Data from DOE's tests are shown in Figure 1 and Figure 2 below. DOE's test sample included baseline models that minimally comply with the existing standards as well as higher-efficiency models that span the available range of efficiencies on the market. Due to the relatively small number of models currently available on the market, DOE supplemented its test sample with models manufactured before the amended standards became effective on January 8, 2013.[3] DOE observed that the MEF translations for top-loading commercial clothes washers are closely correlated with the type of water fill control system.[4] Therefore, DOE proposes separate MEF equations for each water fill control system type. DOE proposes a single WF equation for all top-loading commercial clothes washers because DOE has not observed any significant difference in WF translation between manual and automatic[5] water fill control system types. Figure 1 and Figure 2 show the MEF and WF translation curves, respectively. The proposed equations are as follows, where MEF_{J2} and WF_{J2} are the values of modified energy factor and water factor, respectively, obtained using appendix J2:

(i) MEF for top-loading commercial clothes washers with manual water fill: $MEF = (MEF_{J2} \times 1.53) - 0.14$

(ii) MEF for top-loading commercial clothes washers with automatic water fill: $MEF = (MEF_{J2} \times 1.09) + 0.15$

(iii) WF for all top-loading commercial clothes washers: $WF = (WF_{J2} \times 0.81) + 1.33$

[3] For top-loading commercial clothes washers, differences between MEF and MEF_{J2} for the same model are largely due to differences in the capacity measurement in section 3.1 of both appendices and the equation in section 4.3 of both appendices for calculating per-cycle energy consumption for removal of moisture from the test load (i.e., the ''drying energy''). DOE has tested products manufactured both before and after January 8, 2013 and observed that, for a given model, the differences in capacity and drying energy according to appendix J1 and appendix J2 are independent of the unit's efficiency level. Therefore, for each product type, a single linear translation curve can be used that includes models manufactured both before and after the compliance date of the recently amended standards.

[4] This correlation is largely due to the revised formula in section 4.3 of appendix J2 for calculating the drying energy. In appendix J1, the drying energy calculation includes a load size adjustment factor of 0.52 for all clothes washer types; whereas, in appendix J2, the drying energy calculation is based on the load usage factors listed in Table 4.1.3 of appendix J2, which differ according to the type of water fill control system available on the clothes washer. The amended drying energy calculation in appendix J2 provides greater consistency with the calculations for determining machine electrical energy and hot water heating energy. For a full description of this amendment, see the residential clothes washer test procedure final rule published in the **Federal Register** on March 7, 2012. 77 FR 13888, 13914.

[5] The term ''automatic'' water fill used here refers to water fill control systems that determine the water fill level without requiring user intervention or actions. This includes ''adaptive'' water fill control systems and ''fixed'' water fill control systems, available on some commercial clothes washers, that provide a fixed water level for all load sizes and no water fill selector or water fill control settings available to the user. Clothes washers with fixed water fill control systems are tested in the same manner as clothes washers with adaptive water fill control systems.

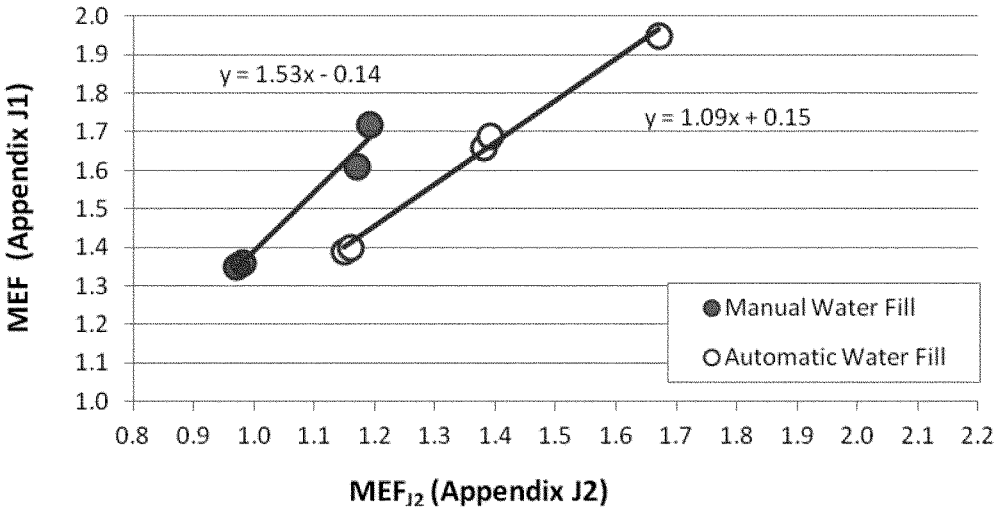

Figure 1: MEF Translation Curves for Top-Loading Commercial Clothes Washers

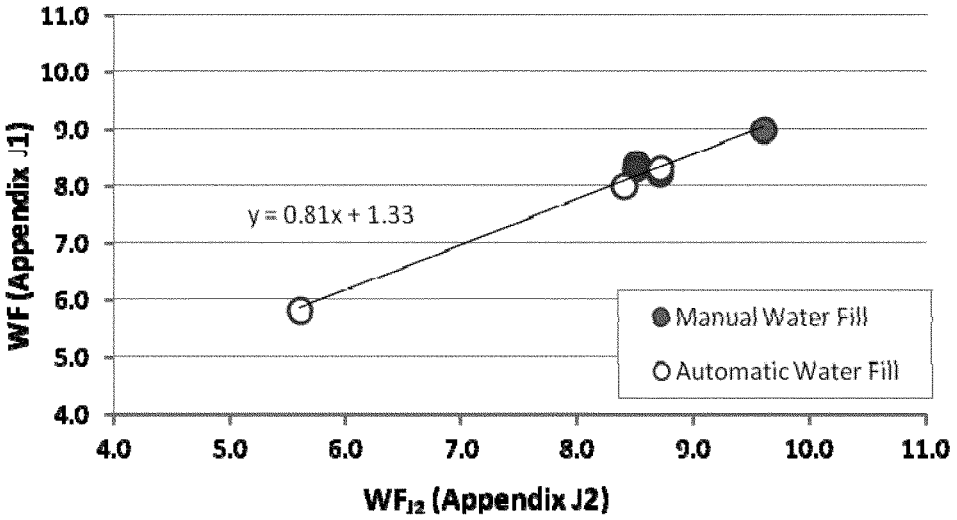

Figure 2: WF Translation Curve for Top-Loading Commercial Clothes Washers

B. Front-Loading Translation Equations

DOE tested a representative sample of front-loading commercial clothes washers currently on the market to determine the MEF and WF equations. Data from DOE's tests are shown in Figure 3 and Figure 4 below. DOE's test sample included baseline models that minimally comply with the existing standard as well as higher-efficiency models that span the available range of efficiencies on the market. As with the top-loading commercial clothes washers, due to the relatively small number of models currently available on the market, DOE supplemented its front-loading test sample with models manufactured before the amended standards became effective on January 8, 2013. DOE proposes a single equation for both MEF and WF for all front-loading commercial clothes washers because all front-loading commercial clothes washers on the market use automatic water fill controls. Figure 3 and Figure 4 show the MEF and WF translation curves, respectively. The crosswalk equations are as follows:

(i) $MEF = (MEF_{J2} \times 1.13) + 0.14$

(ii) $WF = WF_{J2}$

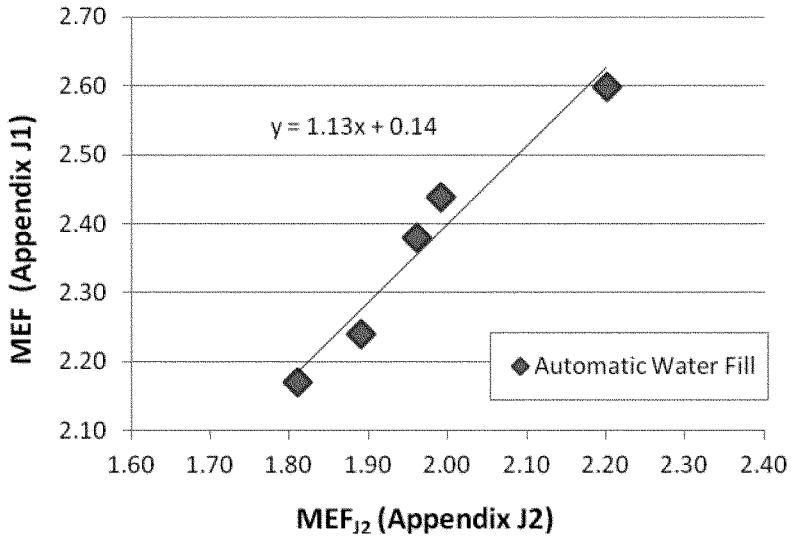

Figure 3: MEF Translation Curve for Front-Loading Commercial Clothes Washers

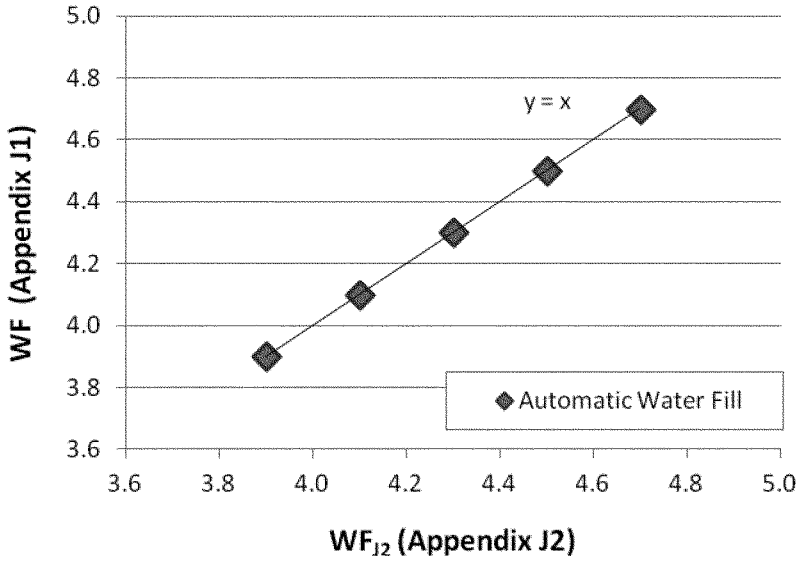

Figure 4: WF Translation Curve for Front-Loading Commercial Clothes Washers

C. Responses to Comments Received From Standards Rulemaking

In response to the framework document and public meeting for the energy conservation standards rulemaking for commercial clothes washers, DOE received comments from interested parties regarding the test procedure. DOE responds to those comments in the discussion that follows.

1. Use of Appendix J2 and Translation Equations

The Association of Home Appliance Manufacturers (AHAM) proposed that DOE not require the use of appendix J2 for compliance with commercial clothes washer standards until such time as DOE requires compliance with amended standards. AHAM stated that it understands the stated reasoning for requiring manufacturers to transition to appendix J2 in March 2015 but questioned whether it is necessary to require that transition prior to amended standards for commercial clothes washers. (AHAM, No. 6 at p. 2) [6]

Alliance Laundry Systems (ALS) supports allowing the continued use of appendix J1 from March 7, 2015, until the effective date of any amended 2018 standards. ALS asserted that that any

[6] A notation in this form provides a reference for information that is in the docket for DOE's rulemaking to develop energy conservation standards for commercial clothes washers (Docket No. EERE–2012–BT–STD–0020), which is maintained at *www.regulations.gov.* This notation indicates that AHAM's statement preceding the reference can be found in document number 6 in the docket, and appears at page 2 of that document.

existing basic model currently in production must still be valid after any test procedure change. (ALS, Public Meeting Transcript, No. 12 at pp. 25–26; ALS, No. 16 at p. 1).

Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas and Electric Company (collectively, the ''California Utilities'') support DOE's proposal to develop correction factors that would become effective for current standards on March 7, 2015, when the new appendix J2 test procedure takes effect, because the new test procedure is different than the previous appendix J1 test procedure. (California Utilities, No. 8 at pp. 1–2)

DOE has established both appendix J1 and appendix J2 as test procedures for clothes washers. Manufacturers of residential clothes washers must use appendix J2 to demonstrate compliance with the amended standards for residential clothes washers, which were developed using appendix J2, on March 7, 2015. Consistent with EPCA requirements at 42 U.S.C. 6314(a)(8), DOE proposes to allow manufacturers of commercial clothes washers to use either appendix J1 or, alternatively, appendix J2 in conjunction with the proposed translation equations, to demonstrate compliance with existing energy conservation standards, which are based on appendix J1. The use of appendix J2 would be required to demonstrate compliance with any amended standards for commercial clothes washers to be published in a final rule by January 1, 2015, which would be based on appendix J2 metrics.

2. Separate Provisions for Commercial Clothes Washers

The Appliance Standards Awareness Project (ASAP) suggested that the residential clothes washer test procedure could contain a separate section containing procedures applicable only to commercial clothes washers. (ASAP, Public Meeting Transcript, No. 12 at p. 37)

The Northwest Energy Efficiency Alliance (NEEA) commented that DOE should consider further investigation and possible modification of the test procedure to accurately reflect commercial clothes washer typical usage patterns. NEEA stated that commercial clothes washers are often used in a different manner than residential clothes washers; for example, commercial clothes washers are often subject to larger load sizes and are not generally used to wash small loads due to fixed costs to wash a load. NEEA believes that by reflecting accurate appliance usage in the test procedure, the standards would achieve greater energy savings in the field. (NEEA, No. 10 at p. 2)

DOE received more specific comments on these issues, and responds to them in the paragraphs that follow.

a. Drying Energy Calculation

Section 4.3 of appendix J2 provides the calculation of per-cycle energy consumption for removal of moisture from the test load (*i.e.,* the drying energy), which is one of the energy components used to calculate MEF. The drying energy is calculated as the product of: (1) the weighted average load size; (2) the remaining moisture content minus 4%; (3) the dryer usage factor of 0.91; and (4) the DEF, the nominal energy required for a clothes dryer to remove moisture from clothing, defined as 0.5 kWh/lb.

Southern Company commented that the test procedure should incorporate a variable DEF, stating that the energy used for drying clothes in a dryer is not an automated process, and is highly dependent on consumer behavior. Southern Company believes that the current DEF factor of 0.5 kWh/lb appears to assume perfect operation and efficiency of drying, and suggests that DOE should determine reasonable values for the clothes dryer energy for both residential and commercial clothes dryers, which are likely to be different, and then use a weighted average value for variable DEF and any other relevant energy factors. (Southern Company, No. 9 at pp.1–2). Furthermore, Southern Company commented that the Electric Power Research Institute has performed metering of residential clothes washers and dryers in real-life situations, and preliminary findings indicate very little dryer energy savings from reduced moisture content in the clothes washers. (Southern Company, Public Meeting Transcript, No. 12 at p. 24) Southern Company suggests that DOE make assumptions about the percentage in the market of features such as dryer moisture sensors and incorporate those into the test procedure. (Southern Company, Public Meeting Transcript, No. 12 at p. 36)

The National Resources Defense Council and Appliance Standards Awareness Project (NRDC and ASAP) jointly commented that DOE should consider the prevalence of timer-activated termination controls in commercial dryers. The commenters stated that the energy savings in commercial clothes washers achieved by reducing the remaining moisture content of clothing at the end of the wash cycle is largely dependent on moisture-sensing termination controls in commercial dryers. NRDC and ASAP cited a 2009 report on residential clothes dryers that found that termination control strategies can vary in effectiveness and that actual dryer energy varied by 20–30 percent for the same load, largely because energy use at the end of cycle is not being captured in the current dryer test procedure. (NRDC and ASAP, No. 11 at p. 2) NRDC also commented that it is more common for commercial dryers to be operated on a time-dry basis rather than a moisture sensing basis. NRDC believes DOE should collect data on the existing stock of dryers in the commercial setting, and the availability of a sensor dry feature in today's stock of commercial dryers. (NRDC, Public Meeting Transcript, No. 12 at pp. 26–27)

The calculation of drying energy in the clothes washer test procedure is intended to provide a nominal estimate of associated drying energy that can be used to distinguish among clothes washer models that provide varying degrees of remaining moisture in the clothing load, to provide a consistent basis of comparison applied across all types of clothes washers. In addition, DOE does not have consumer usage data that would indicate how consumer usage of commercial clothes dryers might differ from residential clothes dryers. DOE also does not have data indicating the prevalence of features in commercial clothes dryers such as moisture sensors that would affect the drying times. Such data would be required to support any changes in the test procedure calculations.

b. Water Heating Calculation

Section 4.1.3 of appendix J2 provides the calculation of total weighted per-cycle hot water energy consumption (*i.e.,* the water heating energy), which is one of the energy components used to calculate MEF. The water heating energy calculations assume a 100% efficient electric water heater that provides a water heating value of 0.00240 kWh/gal/°F. Section 4.1.4 of the test procedure also provides a conversion for gas water heating, assuming a gas water heater efficiency of 75%. However, the gas water heating calculation is not used in the calculation of MEF or WF.

Southern Company commented that these water heater efficiencies are reasonable assumptions, but should be updated as the weighted efficiency of installed water heaters changes over time, as electric heat pump water heaters and gas condensing water heaters gain market share. Southern Company further noted that these assumptions are reasonable because water heater energy usage is not

dependent on consumer behavior, but is an automatic process. (Southern Company, No. 9 at pp. 1–2)

DOE recognizes that the household water heater market includes a wide variety of water heater types at different efficiency levels and using different fuel sources. DOE notes, however, that the calculation of water heating energy in the clothes washer test procedure is intended to provide a nominal estimate of associated water heating energy that can be used to distinguish among clothes washer models that use different amounts of hot water to provide a consistent basis of comparison applied across all types of clothes washers.

c. Temperature Use Factors

Table 4.1.1 of appendix J2 provides the Temperature Use Factors (TUF), which represent the percentage of wash cycles performed by end-users at each available wash/rinse temperature. For a clothes washer with cold, warm, and hot wash cycles (all with cold rinse), which DOE testing indicates is the most common combination found on commercial clothes washers, the TUFs are assigned as follows: cold wash 37%; warm wash 49%; and hot wash 14%.

NRDC and ASAP commented that the cold temperature usage factor of 37% should be corroborated for the commercial environment. (NRDC and ASAP, No. 11 at p. 2)

DOE does not have consumer usage data indicating the prevalence of cold wash cycles performed on commercial clothes washers. Such data would be required to consider any changes in the test procedure calculations.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that the rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the 2007 North American Industry Classification System (NAICS). The threshold number for NAICS classification code 333312—which applies to commercial laundry, dry cleaning, and pressing machine manufacturers—is 500 employees. Searches of the SBA Web site [7] to identify commercial clothes washer manufacturers within these NAICS codes did not identify any small businesses that manufacture commercial clothes washers. Additionally, DOE checked its own publicly available Compliance Certification Database [8] to identify manufacturers of commercial clothes washers. During its research, DOE did not identify any manufacturer of commercial clothes washers that qualify as small businesses as specified by the SBA employee limits. In addition, the rule proposes only the use of equations for translating modified energy factor and water factor values as measured using DOE's new clothes washer test procedure into their equivalent values as measured using the current test procedure. No change to the test method is proposed.

For these reasons, DOE concludes and certifies that today's proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of commercial clothes washers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for commercial clothes washers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including commercial clothes washers. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for commercial clothes washers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this

[7] A searchable database of certified small businesses is available online at: *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

[8] DOE's Compliance Certification Database is available online at: *http://www.regulations.doe.gov/certification-data.*

rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA, (62 FR 12820) also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed

significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to amend the test procedure for measuring the energy efficiency of commercial clothes washers is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. DOE is not requiring the use of any commercial standards in this rulemaking, so these requirements do not apply.

V. Public Participation

Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances.

Issued in Washington, DC, on January 31, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.46 is amended by revising paragraph (b)(2) to read as follows:

§ 429.46 Commercial clothes washers.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) When testing was conducted using Appendix J1 to subpart B of 10 CFR Part 430 for units manufactured on or after January 8, 2013: The modified energy factor (MEF) in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle); and the water factor (WF) in gallons per cubic feet per cycle (gal/cu ft/cycle);

(ii) When testing was conducted using Appendix J2 to subpart B of 10 CFR Part 430 for units manufactured on or after January 8, 2013: The modified energy factor (MEF) in cu ft/kWh/cycle, as calculated pursuant to paragraph (b)(2)(ii)(A) of this section after applying the sampling provisions of paragraph (a) of this section; and the water factor (WF) in gal/cu ft/cycle, as calculated pursuant to paragraph (b)(2)(ii)(B) of this section after applying the sampling provisions of paragraph (a) of this section.

(A) Calculate MEF as:

$$MEF = (MEF_{J2} \times A_{MEF}) + B_{MEF}$$

where MEF_{J2} is defined as the modified energy factor as calculated in section 4.5 of Appendix J2, and A_{MEF} and B_{MEF} are defined in Table 1:

TABLE 1—MODIFIED ENERGY FACTOR TRANSLATION COEFFICIENTS FOR COMMERCIAL CLOTHES WASHERS

Product class and water fill control system	A_{MEF}	B_{MEF}
Top-Loading, Manual water fill	1.53	−0.14
Top-Loading, Automatic water fill	1.09	0.15
Front-Loading	1.13	0.14

(B) Calculate WF as:

$$WF = (WF_{J2} \times A_{WF}) + B_{WF}$$

where WF_{J2} is defined as the water factor as calculated in section 4.2.12 of Appendix J2, and A_{WF} and B_{WF} are defined in Table 2:

TABLE 2—WATER FACTOR TRANSLATION COEFFICIENTS FOR COMMERCIAL CLOTHES WASHERS

Product class	A_{WF}	B_{WF}
Top-Loading	0.81	1.33
Front-Loading	1.00	1.00

(iii) When using Appendix J2 to subpart B of 10 CFR Part 430 for units manufactured on or after the effective date of any amended standards for commercial clothes washers based on Appendix J2 efficiency metrics: The modified energy factor (MEF) in cu ft/kWh/cycle, as determined in section 4.5 of Appendix J2; and the integrated water factor (IWF) in gal/cu ft/cycle, as determined in section 4.2.13 of Appendix J2.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6317.

■ 4. Section 431.152 is amended by adding in alphabetical order the definitions for ''IWF,'' ''MEF,'' ''MEF_{J2},'' ''WF,'' and ''WF_{J2},'' to read as follows:

§ 431.152 Definitions concerning commercial clothes washers.

* * * * *

IWF means integrated water factor, in gallons per cubic feet per cycle (gal/cu ft/cycle), as determined in section 4.2.13 of Appendix J2 to subpart B of 10 CFR Part 430.

MEF means modified energy factor, in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle), as determined in section 4.4 of Appendix J1 to subpart B of 10 CFR Part 430.

MEF_{J2} means modified energy factor, in cu ft/kWh/cycle, as determined in section 4.5 of Appendix J2 to subpart B of 10 CFR Part 430.

WF means water factor, in gal/cu ft/cycle, as determined in section 4.2.3 of Appendix J1 to subpart B of 10 CFR Part 430.

WF_{J2} means water factor, in gal/cu ft/cycle, as determined in section 4.2.12 of Appendix J2 to subpart B of 10 CFR Part 430.

■ 5. Section 431.154 is revised to read as follows:

§ 431.154 Test procedures.

The test procedures for clothes washers in either Appendix J1 or Appendix J2 to subpart B of part 430 of this chapter must be used to test

commercial clothes washers before the effective date of any amended standards based on Appendix J2 efficiency metrics. The test procedures for clothes washers in Appendix J2 to subpart B of part 430 of this chapter must be used to test commercial clothes washers manufactured on or after the effective date of any amended standards based on Appendix J2 efficiency metrics.

[FR Doc. 2014–02818 Filed 2–10–14; 8:45 a.m.]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–STD–0047]

RIN 1904–AC88

Energy Conservation Standards for Residential Boilers: Availability of Analytical Results and Modeling Tools

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability.

SUMMARY: The U.S. Department of Energy (DOE) has completed a provisional analysis that estimates the potential economic impacts and energy savings that could result from promulgating amended energy conservation standards for residential boilers. At this time, DOE is not proposing any amendments to the energy conservation standards for residential boilers. However, it is publishing this analysis so stakeholders can review the analytical output, the underlining assumptions, and the calculations that might ultimately support amended standards. DOE encourages interested parties to provide any additional data or information that may improve the analysis.

DATES: *Comments:* DOE will accept comments, data, and information regarding this notice of data availability (NODA) no later than March 13, 2014.

ADDRESSES: Any comments submitted must identify the NODA for Energy Conservation Standards for Residential Boilers, and provide docket number EERE–2012–BT–STD–0047 and/or regulatory information number (RIN) number 1904–AC88. Comments may be submitted using any of the following methods:

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

2. *Email: ResBoilers2012STD0047@ee.doe.gov.* Include the docket number EERE–2012–BT–STD–0047 and/or RIN 1904–AC88 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket, EERE–2012–BT–STD–0047, is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0047.* The regulations.gov Web page contains instructions on how to access all documents in the docket, including public comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document. For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email *residential_furnaces_and_boilers@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

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I. History of Energy Conservation Standards Rulemaking for Residential Boilers

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances and certain industrial and commercial equipment.[2] The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA to establish energy conservation standards for residential furnaces and boilers, and set requirements to conduct two cycles of rulemaking to determine whether these standards should be amended. (42 U.S.C. 6295(f)).

On November 19, 2007, DOE published a final rule in the **Federal Register** (hereafter referred to as the ''November 2007 final rule'') revising the energy conservation standards for furnaces and boilers, which addressed the first required review of minimum standards for boilers under 42 U.S.C. 6295(f)(4)(B). 72 FR 65136. Compliance with the standards in the November 2007 final rule would have been required by November 19, 2015. However, on December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

140, was signed into law, which further revised the energy conservation standards for residential boilers. More specifically, EISA 2007 revised the minimum annual fuel utilization efficiency (AFUE) requirements for residential boilers and set several design requirements for each product class (42 U.S.C. 6295(f)(3)). EISA 2007 required compliance with the amended energy conservation standards for residential boilers beginning on September 1, 2012.

Only July 15, 2008, DOE issued a final rule technical amendment to the 2007 furnaces and boilers final rule, which was published in the **Federal Register** on July 28, 2008, to codify the energy conservation standard levels, the design requirements, and compliance dates for residential boilers outlined EISA 2007. 73 FR 43611. For gas-fired hot water boilers, oil-fired hot water boilers, and electric hot water boilers, EISA 2007 requires that residential boilers manufactured after September 2012 have an automatic means for adjusting water temperature. 10 CFR 430.32(e)(2)(ii)–(iv). The automatic means for adjusting water temperature must automatically adjust the water temperature of the water supplied by the boiler to ensure that an incremental change in the inferred heat load produces a corresponding incremental change in the temperature of the water supplied. EISA 2007 also disallows the use of constant-burning pilot lights in gas-fired hot water boilers and gas-fired steam boilers.

DOE initiated this rulemaking pursuant to 42 U.S.C. 6295(f)(4)(C), which requires DOE to conduct a second round of amended standards rulemaking for residential boilers. EPCA, as amended by EISA 2007, also requires that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of the determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1)) As noted above, DOE's last final rule for residential boilers was issued on July 15, 2008, so DOE must act by July 15, 2014. This rulemaking will satisfy both statutory provisions.

Furthermore, EISA 2007 amended EPCA to require that any new or amended energy conservation standard adopted after July 1, 2010, shall address standby mode and off mode energy use pursuant to 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3)) DOE will consider standby mode and off mode energy use as part of this rulemaking for residential boilers.

II. Current Status

In initiating this rulemaking, DOE prepared a Framework Document, ''Energy Conservation Standards Rulemaking Framework Document for Residential Boilers,'' which describes the procedural and analytical approaches DOE anticipates using to evaluate energy conservation standards for residential boilers. DOE published a notice that announced both the availability of the Framework Document and a public meeting to discuss the proposed analytical framework for the rulemaking. That notice also invited written comments from the public. 78 FR 9631 (Feb. 11, 2013). This document is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0047.*

DOE held a public meeting on March 13, 2013, at which time it described the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). Representatives for manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting.

Comments received since publication of the Framework Document have helped DOE identify and resolve issues related to the analyses performed for this NODA. A discussion of these comments and DOE's responses is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0047* (see chapter 2 of the supporting documentation).

At this time, DOE is not proposing any amended energy conservation standards for residential boilers. DOE encourages stakeholders to provide any additional data or information that may improve DOE's analysis. DOE may revise the analysis presented in today's notice based on any new or updated information or data it obtains between now and the publication of a notice of proposed rulemaking (NOPR).

III. Summary of the Analysis Performed by DOE

This section provides a description of the analytical framework that DOE is using to evaluate potential amended energy conservation standards for residential boilers. This section sets forth the methodology, analytical tools, and relationships among the various analyses that are part of this rulemaking.

The analyses performed in preparation for this NODA are listed below.

- A market and technology assessment to characterize the relevant products, their markets, and technology options for improving their energy efficiency, including prototype designs.
- A screening analysis to review each technology option and determine if it is technologically feasible; is practicable to manufacture, install, and service; would adversely affect product utility or product availability; or would have adverse impacts on health and safety.
- An engineering analysis to develop relationships that show the manufacturer's cost of achieving increased efficiency.
- A markups analysis to develop distribution channel markups that relate the manufacturer selling price to the cost to the consumer.
- An energy use analysis to determine the annual energy use of the considered products in a representative set of users.
- A LCC and PBP analysis to calculate the anticipated savings in operating costs at the consumer level throughout the life of the covered products compared with any increase in the installed cost for the products likely to result directly from standards.
- A shipments analysis to forecast product shipments, which are then used to calculate the national impacts of standards on energy, net present value (NPV), and future manufacturer cash flows.
- A national impact analysis (NIA) to assess the aggregate impacts at the national level of potential amended energy conservation standards for the considered products, as measured by the NPV of total consumer economic impacts and the national energy savings (NES).
- A preliminary manufacturer impact analysis (MIA) to assess the potential impacts of amended energy conservation standards on manufacturers' capital conversion expenditures, marketing costs, shipments, and research and development costs.

The tools used in preparing several of the above analyses (life-cycle cost and national impacts) are available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0047.* Each individual spreadsheet includes an introduction describing the various inputs and outputs to the analysis, as well as operation instructions. Details regarding the methods and data used in the analyses may be found at the same Web site.

The sections below present an overview of the analyses DOE has conducted for residential boilers. Using the methods described in this NODA, DOE calculated results pertaining to

potential amended energy efficiency standard levels for residential boilers. The results may be found at the same Web site.

A. Market and Technology Assessment

When DOE begins an energy conservation standards rulemaking, it develops information that provides an overall picture of the market for the products considered, including the nature of the products, market characteristics, and industry structure. This activity consists of both quantitative and qualitative efforts based primarily on publicly-available information. The market assessment examined manufacturers, trade associations, and the quantities and types of products offered for sale.

DOE reviewed relevant literature and interviewed manufacturers to develop an overall picture of the residential boiler industry in the United States. Industry publications and trade journals, government agencies, and trade organizations provided the bulk of the information, including: (1) Manufacturers and their approximate market shares; (2) shipments by product type (*e.g.,* gas-fired hot water, oil-fired hot water); (3) product information; and (4) industry trends.

DOE developed a list of technologically feasible design options for the considered products through consultation with manufacturers of components and systems, and from trade publications and technical papers. Since many options for improving product efficiency are available in existing units, product literature and direct examination provided additional information.

B. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies identified in the technology assessment to determine which technologies to consider further and which technologies to screen out. DOE consulted with industry, technical experts, and other interested parties in developing a list of energy-saving technologies for the technology assessment. DOE then applied the screening criteria to determine which technologies were unsuitable for further consideration in this rulemaking.

The screening analysis examines whether various technologies: (1) Are technologically feasible; (2) are practicable to manufacture, install, and service; (3) have an adverse impact on product utility or availability; and (4) have adverse impacts on health and safety. If an answer to the first two criteria is ''no,'' or an answer to the second two criteria is ''yes,'' DOE will not consider that technology further. In consultation with interested parties, DOE reviewed the list of residential boiler technologies according to these criteria. In the engineering analysis, DOE further considers the efficiency-enhancement technologies that it did not eliminate in the screening analysis.

C. Engineering Analysis

The engineering analysis establishes the relationship between manufacturing production cost and efficiency levels for each residential boiler product class. This relationship serves as the basis for cost-benefit calculations in terms of individual consumers, manufacturers, and the Nation. To determine the cost to consumers of residential boilers at various efficiency levels, DOE estimated manufacturing costs, markups in the distribution chain, installation costs, and maintenance costs.

DOE typically structures its engineering analysis around one of three methodologies: (1) The design-option approach, which calculates the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, which calculates the relative costs of achieving increases in energy efficiency levels without regard to the particular design options used to achieve such increases; and/or (3) the reverse-engineering or cost-assessment approach, which involves a ''bottom-up'' manufacturing cost assessment based on a detailed bill of materials derived from tear-downs of the equipment being analyzed.

For this analysis, DOE conducted the engineering analysis for residential boilers using a combination of the efficiency level and cost-assessment approaches for analysis of various energy efficiency levels. More specifically, DOE identified the efficiency levels for analysis and then used the cost-assessment approach to determine the manufacturing costs at those levels. This approach involved physically disassembling commercially-available products, consulting with outside experts, reviewing publicly-available cost and performance information, and modeling equipment cost.

D. Markups Analysis

DOE uses manufacturer-to-customer markups (*e.g.,* manufacturer markups, retailer markups, distributors markups, contractor markups (where appropriate), and sales taxes) to convert the manufacturer selling price estimates from the engineering analysis to customer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis.

Before developing markups, DOE defines key market participants and identifies distribution channels. DOE used three types of distribution channels to describe how most residential boilers pass from the manufacturer to the consumer: (1) Replacement market; (2) new construction, and (3) national accounts.[3]

After defining the participants and channels, DOE also determined the existence and magnitude of differences between markups for baseline products (baseline markups) and higher-efficiency products (incremental markups), in order to transform the manufacturer selling price into a consumer product price. The development of the markups relied on data from both government and industry sources. DOE uses the baseline markups, which cover all of a distributor's or contractor's costs, to determine the sales price of baseline models. Incremental markups are coefficients that DOE applies to the incremental cost of higher-efficiency models. Because companies mark up the price at each point in the distribution channel, both baseline and incremental markups are dependent on the particular distribution channel.

E. Energy Use Analysis

The energy use analysis determines the annual energy consumption of residential boilers used in representative U.S. single-family homes, multi-family residences, and commercial buildings, and assesses the energy savings potential of increased boiler efficiency. DOE estimated the annual energy consumption of residential boilers at specified energy efficiency levels across a range of climate zones, building characteristics, and heating applications. The annual energy consumption includes the natural gas, liquid petroleum gas (LPG), oil, and/or electricity use by the boiler for space and water heating. The annual energy consumption of residential boilers is used in subsequent analyses, including the LCC and PBP analysis and the NIA.

For the residential sector, DOE consulted the Energy Information Administration's (EIA) 2009 Residential Energy Consumption Survey (RECS

[3] The national accounts channel is an exception to the usual distribution channel that is only applicable to those residential boilers installed in the small to mid-size commercial buildings where the on-site contractor staff purchase equipment directly from the wholesalers at lower prices due to the large volume of equipment purchased, and perform the installation themselves.

2009) to establish a sample of households using residential boilers for each boiler product class.[4] The RECS data provide information on the vintage of the home, as well as heating energy use in each household. DOE used the household samples not only to determine boiler annual energy consumption, but also as the basis for conducting the LCC and PBP analysis. DOE projected household weights and household characteristics in 2020, the expected compliance date of any amended energy conservation standards for residential boilers.

DOE accounted for applications of residential boilers in multi-family housing and commercial buildings because the intent of the analysis of consumer impacts is to capture the full range of usage conditions for these products. DOE considered that the definition of ''residential boiler'' is limited only by its capacity and not by the application type. DOE determined that these applications represent about 14 percent of the residential gas-fired boiler market and 11 percent of the residential oil-fired boiler market.

For the commercial building sample, DOE used the EIA's 2003 Commercial Building Energy Consumption Survey[5] (CBECS 2003) to establish a sample of commercial buildings using residential boilers for each boiler product class. Criteria were developed to help size these boilers using several variables, including building square footage and estimated supply water temperature. For boilers used in multi-family housing, DOE used the RECS 2009 sample discussed above, accounting for situations where more than one residential boiler is used to heat a building.

To estimate the annual energy consumption of boilers meeting higher efficiency levels, DOE first calculated the heating load based on the RECS and CBECS estimates of the annual energy consumption of the boiler for each household. DOE estimated the house heating load by reference to the existing boiler's characteristics, specifically its capacity and efficiency (AFUE), as well as by the heat generated from the electrical components. The AFUE of the existing boilers was determined using the boiler vintage (the year of installation of the equipment) from RECS and historical data on the market share of boilers by AFUE. DOE then used the house heating load to determine the burner operating hours, which are needed to calculate the fossil fuel consumption and electricity consumption based on the DOE residential furnace and boiler test procedure. To calculate pump and other auxiliary components' electricity consumption, DOE utilized data from manufacturer product literature.

Additionally, DOE adjusted the energy use to normalize for weather by using long-term heating degree-day data for each geographical region.[6] DOE also accounted for change in building shell characteristics between 2009 and 2020 by applying the building shell efficiency indexes in the National Energy Modeling System (NEMS) based on EIA's *Annual Energy Outlook 2013* (*AEO 2013*).[7]

DOE is aware that some residential boilers have the ability to provide both space heating and domestic water heating and that these products are widely available and may vary greatly in design. For these applications, DOE accounted for the boiler energy used for domestic water heating, which is part of the total annual boiler energy use. To accomplish this, DOE used the RECS 2009 and/or CBECS data to identify those boiler households or buildings that use the same fuel type for space and water heating and then assumed that a fraction of these identified households/buildings used the boiler for both applications.

To calculate the annual water-heating energy use for each boiler efficiency level, DOE first calculated the water-heating load by multiplying the annual fuel consumption for water heating (derived from RECS or CBECS) by the AFUE of the existing boiler, adjusted for the difference between AFUE and recovery efficiency for water heating. DOE then calculated the boiler energy use for each efficiency level by multiplying the water-heating load by the AFUE of the selected efficiency level, adjusted for the difference between AFUE and recovery efficiency for water heating.

The Department calculated boiler electricity consumption for the circulating pump, the draft inducer,[8] and the ignition system. If a household required a condensate pump, which is sometimes installed with higher-efficiency equipment, DOE assumed that the pump consumes 60 watts and operated at the same time as the burner. For single-stage boilers, the Department calculated the electricity consumption as the sum of the electrical energy used during boiler operation for both space heating, water heating, and standby energy consumption. For two-stage and modulating equipment, this formula includes parameters for the operation at full, modulating, and reduced load.

The Department calculated boiler standby mode and off mode electricity consumption for times when the boiler is not in use.

A rebound effect occurs when a more-efficient piece of equipment is used more intensively, such that the expected energy savings from the efficiency improvement may not be fully realized. DOE conducted a review of information that included a 2009 study examining empirical estimates of the rebound effect for various energy-using products.[9] Based on this review, DOE has tentatively concluded that the inclusion of a rebound effect of 20 percent for residential boilers is warranted for this analysis. DOE incorporates this effect in the NIA.

F. Life-Cycle Cost and Payback Period Analysis

In determining whether an energy efficiency standard is economically justified, DOE considers the economic impact of potential standards on consumers. The effect of new or amended standards on individual consumers usually includes a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- LCC (life-cycle cost) is the total consumer cost of an appliance or product, generally over the life of the appliance or product, including purchase and operating costs. The latter consist of maintenance, repair, and energy costs. Future operating costs are discounted to the time of purchase and

[4] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey: 2009 RECS Survey Data* (2013) (Available at: <*http://www.eia.gov/consumption/residential/data/2009/*>) (Last accessed March, 2013).

[5] U.S. Department of Energy: Energy Information Administration, *Commercial Buildings Energy Consumption Survey* (2003) (Available at: <*http://www.eia.gov/consumption/commercial/data/2003/index.cfm?view=microdata*>) (Last accessed November, 2013).

[6] National Oceanic and Atmospheric Administration, NNDC Climate Data Online (Available at: *http://www7.ncdc.noaa.gov/CDO/CDODivisionalSelect.jsp*) (Last accessed March 15, 2013).

[7] U.S. Department of Energy-Energy Information Administration, *Annual Energy Outlook 2013 with Projections to 2040* (Available at: <*http://www.eia.gov/forecasts/aeo/*>).

[8] In the case of modulating condensing boilers, to accommodate lower firing rates, the inducer will provide lower combustion airflow to regulate the excess air in the combustion process. DOE assumed that modulating condensing boilers are equipped with inducer fans with PSC motors and two-stage controls. The inducers are assumed to run at a 70-percent airflow rate when the modulating unit operates at low-fire.

[9] S. Sorrell, J. D., and M. Sommerville, ''Empirical estimates of the direct rebound effect: A review,'' *Energy Policy* (2009) 37: pp. 1356–71.

summed over the lifetime of the appliance or product.

• PBP (payback period) measures the amount of time it takes consumers to recover the assumed higher purchase price of a more energy-efficient product through reduced operating costs.

DOE analyzed the net effect of potential amended boiler standards on consumers by calculating the LCC and PBP using the engineering performance data, the energy-use data, and the markups. Inputs to the LCC calculation include the installed cost to the consumer (purchase price, including sales tax where appropriate, plus installation cost), operating expenses (energy expenses, repair costs, and maintenance costs), the lifetime of the product, and a discount rate. Inputs to the payback period calculation include the installed cost to the consumer and first-year operating costs.

DOE performed the LCC and PBP analyses using a spreadsheet model combined with Crystal Ball (a commercially-available software program used to conduct stochastic analysis using Monte Carlo simulation and probability distributions) to account for uncertainty and variability among the input variables. Each Monte Carlo simulation consists of 10,000 LCC and PBP calculations using input values that are either sampled from probability distributions and household samples or characterized with single point values. The analytical results include a distribution of 10,000 data points showing the range of LCC savings and PBPs for a given efficiency level relative to the base case efficiency forecast. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC and PBP calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

1. Inputs to Installed Cost

The total installed cost to the consumer is the sum of the product price, including sales tax where appropriate, and installation cost (labor and materials cost).

DOE estimated the costs associated with installing a boiler in a new housing unit or as a replacement for an existing boiler. Installation costs account for labor and material costs and any additional costs, such as venting and piping modifications and condensate disposal that might be required when installing equipment at various efficiency levels.

For replacement installations, DOE included a number of additional costs (''adders'') for a fraction of the sample households. For non-condensing boilers, these additional costs may account for updating of flue vent connectors, vent resizing, chimney relining, and, for a fraction of installations, the costs for a stainless steel vent. For condensing boilers, these additional costs included adding a new flue vent (polyvinylchloride (PVC)), combustion air venting for direct vent installations (PVC), concealing vent pipes for indoor installations, addressing an orphaned water heater (by updating flue vent connectors, vent resizing, or chimney relining), and condensate removal.

DOE also included installation adders for new construction installations. For non-condensing boilers, the only adder is a new flue vent (metal, including a fraction with stainless steel venting). For condensing gas boilers, the adders include a new flue vent (PVC), combustion air venting for direct vent installations (PVC), accounting for a commonly vented water heater, and condensate removal.

With regards to all near-condensing boiler installations, DOE has accounted for the installation costs of the ''near-condensing'' products by considering the additional cost of using stainless steel venting.

2. Inputs to Operating Cost

The calculation of energy costs at each considered efficiency level makes use of the annual energy use derived in the energy use analysis, along with appropriate energy prices. DOE assigned an appropriate energy price to each household or commercial building in the sample, depending on its location. For future prices, DOE used the projected annual changes in average residential and commercial natural gas, LPG, electricity, and fuel oil prices in *AEO 2013*.[10]

DOE estimated maintenance and repair costs for residential boilers at each considered efficiency level using a variety of sources, including 2013 RS Means,[11] manufacturer literature, and information from expert consultants. DOE estimated the frequency of annual maintenance using data from a proprietary consumer survey.[12] DOE also accounted for the difference in the maintenance practices for the oil boiler market and the gas boiler market.

Product lifetime is the age at which an appliance is retired from service. DOE conducted an analysis of boiler lifetimes using a combination of shipments data, the boiler stock, and RECS data on the age of the boilers in the homes. The data allowed DOE to develop a survival function, which provides an average and a median appliance lifetime. In addition, DOE reviewed a number of sources to validate the derived boiler lifetime, including research studies (from the U.S. and Europe) and field data reports.

DOE used discount rates to determine the present value of lifetime operating expenses. The discount rate used in the LCC analysis represents the rate from an individual consumer's perspective. Much of the data used for determining consumer discount rates comes from the Federal Reserve Board's triennial Survey of Consumer Finances.[13]

3. Base-Case Distributions by Efficiency Levels

To estimate the share of consumers affected by a potential standard at a particular efficiency level, DOE's LCC and PBP analysis considers the projected distribution (*i.e.,* market shares) of product efficiencies that consumers will purchase in the first compliance year under the base case (the case without amended energy conservation standards).

DOE accounted for the increasing market share of condensing residential gas boilers in its base-case projection. DOE's projection used available data on recent market trends in boiler efficiency and takes into account the potential impacts of the ENERGY STAR program and other policies that may affect the demand for more-efficient boilers. DOE estimated the market shares of the efficiency levels in each product class in 2020 using data on the share of models in each product class that are of different designs, based on the AHRI certification directory.[14]

G. Shipments Analysis

DOE used forecasts of product shipments to calculate the national impacts of potential amended energy

[10] DOE plans to use the *Annual Energy Outlook 2014* when it becomes available.

[11] RS Means Company Inc., *RS Means Facilities Maintenance & Repair Cost Data* (2013).

[12] Decision Analysts, *2008 American Home Comfort Study: Online Database Tool* (2009) (Available at: <*http://www.decisionanalyst.com/Syndicated/HomeComfort.dai*>).

[13] Available at *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[14] Air Conditioning Heating and Refrigeration Institute, Consumer's Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment (AHRI Directory September 2013) (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*) (Last accessed September, 2013).

conservation standards on energy use, NPV, and future manufacturer cash flows. A discussion of the shipments forecast methodology and the sources used is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0047* (see chapter 9 of the supporting documentation). DOE estimated boiler shipments by projecting shipments in three market segments: (1) Replacements; (2) new housing; and (3) new owners in buildings that did not previously have a boiler. DOE also considered whether standards that require more-efficient boilers would have an impact on boiler shipments.

To project boiler replacement shipments, DOE developed retirement functions for boilers from the lifetime estimates and applied them to the existing products in the housing stock. The existing stock of products is tracked by vintage and developed from historical shipments data.[15] [16]

To project shipments to the new housing market, DOE utilized a forecast of new housing construction and historic saturation rates of boiler product types in new housing. DOE used *AEO 2013* for forecasts of new housing. Boiler saturation rates in new housing are provided by the U.S. Census Bureau's *Characteristics of New Housing.*[17]

To estimate future shipments to new owners, DOE determined that a fraction of residential boiler shipments are to new owners with no previous boiler based on a proprietary consumer survey.[18] DOE also accounted for potential switching between different boiler product classes (steam to hot water and oil to gas).

To estimate the impact of the projected price increase for the considered efficiency levels, DOE used a relative price elasticity approach. This approach gives some weight to the operating cost savings from higher-efficiency products. The impact of higher boiler prices (at higher efficiency levels) is expressed as a percentage drop in market share for each year during the analysis period.

Additional details regarding the shipments analysis can be found in worksheet ''NODA Results'' of the NIA Spreadsheet.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the net present value (NPV) from a national perspective of total consumer costs and savings expected to result from new or amended energy conservation standards at specific efficiency levels. DOE determined the NPV and NES for the efficiency levels considered for the boiler product classes analyzed. To make the analysis more accessible and transparent to all interested parties, DOE prepared a computer spreadsheet that uses typical values (as opposed to probability distributions) as inputs.

Analyzing impacts of potential energy conservation standards for residential boilers requires comparing projections of U.S. energy consumption with amended energy conservation standards against projections of energy consumption without amended standards. The forecasts include projections of annual appliance shipments, the annual energy consumption of new appliances, and the purchase price of new appliances.

A key component of DOE's NIA is the energy efficiencies forecasted over time for the base case (without new standards) and each of the standards cases. DOE developed a distribution of efficiencies in the base case for 2020 (the year of anticipated compliance with an amended standard) for each residential boiler product class. Details can be found in worksheet ''NODA Results'' of the NIA spreadsheet. In each standards case, a ''roll-up'' scenario approach was applied to establish the efficiency distribution for 2020. Under the ''roll-up'' scenario, DOE assumed that product efficiencies in the base case that do not meet the standard level under consideration would ''roll-up'' to meet the new standard level, and product efficiencies above the standard level under consideration would not be affected.

Regarding the efficiency trend in the years after compliance, for the base case, DOE estimated that the overall market share of condensing gas-fired and oil-fired hot water boilers would grow. DOE assumed a similar trend for the standards cases. Details on these efficiency trends are in worksheet ''NODA Results'' of the NIA spreadsheet.

The inputs for determining the national energy savings for each product analyzed are: (1) Annual energy consumption per unit; (2) shipments; (3) product stock; (4) national energy consumption; and (5) site-to-source conversion factors. DOE calculated the annual national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption under the base case (without new or amended efficiency standards) and under each higher efficiency standard. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to source (primary) energy using annual conversion factors derived from the most recent version of NEMS. Cumulative energy savings are the sum of annual NES over the timeframe of the analysis.

DOE has historically presented NES in terms of primary energy savings. In response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Science, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). For this analysis, DOE calculated FFC energy savings using a NEMS-based methodology.

The inputs for determining NPV are: (1) Total annual installed cost; (2) total annual savings in operating costs; (3) a discount factor to calculate the present value of costs and savings; (4) present value of costs; and (5) present value of savings. DOE determined the net savings for each year as the difference between the base case and each standards case in terms of the total savings in operating costs and total increases in installed costs. DOE calculated NPV as the difference between the present value of operating cost savings and the present value of total installed costs over the lifetime of products shipped in the forecast period. DOE estimates the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis. (OMB Circular A–4

[15] U.S. Appliance Industry Statistical Review, *Appliance Magazine,* various years.

[16] Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Confidential Shipment data for 2003–2012.

[17] Available at: *http://www.census.gov/const/www/charindex.html.*

[18] Decision Analysts, *2008 American Home Comfort Study: Online Database Tool* (2009) (Available at: <*http://www.decisionanalyst.com/Syndicated/HomeComfort.dai*>).

(Sept. 17, 2003), section E, ''Identifying and Measuring Benefits and Costs'')

DOE used EIA's *Annual Energy Outlook* (*AEO 2013*) as the source of projections for future energy prices.

I. Preliminary Manufacturer Impact Analysis

In the NOPR phase, DOE will perform a manufacturer impact analysis (MIA) to estimate the financial impact of potential amended energy conservation standards on residential boiler manufacturers, as well as to calculate the impact of such standards on employment and manufacturing capacity.

DOE recognizes that while any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. As a preliminary step to conducting the MIA, as part of this NODA analysis, DOE assessed the cumulative regulatory burden by identifying and characterizing other significant product-specific regulations that could affect residential boiler manufacturers. DOE identified the following regulations relevant to residential boiler manufactures including: DOE energy efficiency standards, ENERGY STAR, and local (State and regional) NO_X requirements.

IV. Public Participation

DOE is interested in receiving comments on all aspects of the data and analysis presented in the NODA and supporting documentation that can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0047.*

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Issued in Washington, DC, on January 31, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–02823 Filed 2–10–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0171; Airspace Docket No. 13–ANM–6]

Proposed Amendment of Class E Airspace; Redmond, OR.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace areas at Redmond, OR, to accommodate Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures for Instrument Flight Rules (IFR) operations at Roberts Field. This action, initiated by the biennial review of the Redmond, OR, airspace area, would enhance the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before March 28, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0171; Airspace Docket No. 13–ANM–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0171 and Airspace Docket No. 13–ANM–6) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0171 and Airspace Docket No. 13–ANM–6''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface airspace at Roberts Field, Redmond, OR, to remove the segment extending from the 5.1 mile radius of the airport to .9 miles west of the VORTAC. After a biennial review of the airspace, the FAA found this action necessary as the airspace is no longer needed. Class E airspace extending 700 feet above the surface would be modified with segments extending from the 7.6-mile radius of Roberts Field to 11.5 miles northeast and 15 miles southeast of the airport. Class E airspace designated as an extension to the Class D and Class E surface area would be modified by adding a segment extending from the 5.1-mile radius of Roberts Field to 3.5 miles southeast of the airport, and removing the segment from the 5.1 mile radius of the airport to .9 miles west of the VORTAC to accommodate RNAV (GPS) standard instrument approach procedures and for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6002, 6004 and 6005, respectively, of FAA Order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for

the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would modify controlled airspace at Roberts Field, Redmond, OR.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 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 6002 Class E airspace Designated as Surface Areas

* * * * *

ANM OR E2 Redmond, OR [Modified]

Redmond, Roberts Field, OR
(Lat. 44°15′14″ N., long. 121°09′00″ W.)

That airspace within a 5.1 mile radius of Roberts Field. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area

* * * * *

ANM OR E4 Redmond, OR [Modified]

Redmond, Roberts Field, OR
(Lat. 44°15′14″ N., long. 121°09′00″ W.)

That airspace extending upward from the surface within 1 mile each side of the 122° bearing of Roberts Field extending from the 5.1 mile radius to 3.5 miles southeast of the airport. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM OR E5 Redmond, OR [Modified]

Redmond, Roberts Field, OR
(Lat. 44°15′14″ N., long. 121°09′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6 mile radius of Roberts Field, and within 3 miles either side of the 87° degree bearing of Roberts field extending from the 7.6 mile radius to 11.5 miles northeast of the airport, and within 3.5 miles either side of the 122° bearing of the airport extending from the 7.6 mile radius to 15 miles southeast of the airport.

Issued in Seattle, Washington, on February 3, 2014.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–02852 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2014–0049; FRL–9906–42–Region–8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove revisions to the South Dakota State Implementation Plan (SIP) submitted by the South Dakota Department of Environment and Natural Resources (DENR) to EPA on June 20, 2011. The proposed SIP revisions address the permitting of sources of greenhouse gases (GHGs). Specifically, we propose to approve revisions to the State's Prevention of Significant Deterioration (PSD) program to incorporate the provisions of the federal PSD and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). The proposed SIP revisions incorporate by reference the federal Tailoring Rule's emission thresholds for determining which new stationary sources and modifications to existing stationary sources become subject to South Dakota's PSD permitting requirements for their GHG emissions. EPA is proposing to disapprove a related provision that would rescind the State's Tailoring Rule revision in certain circumstances. EPA will take separate action on an amendment to the chapter Construction Permits for New Sources or Modifications in the June 20, 2011 submittal, regarding permits for minor sources. EPA is proposing this action under section 110 and part C of the Clean Air Act (the Act or CAA).

DATES: Comments must be received on or before March 13, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2014–0049, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: ostendorf.jody@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2014–0049. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or email, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that 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 *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–7814, *ostendorf.jody@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Information is organized as follows:

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I. Background for Our Proposed Action
II. History of EPA's GHG-Related Actions
III. EPA's Analysis of the State's Submittal
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I. Background for Our Proposed Action

CAA section 110(a)(2)(C) requires states to develop and submit to EPA for approval into the state SIP preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants. There are three separate new source review (NSR) programs: PSD, Nonattainment New Source Review (NNSR), and Minor NSR. The PSD program is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program (1) addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as ''major,'' and (2) applies regardless of the designation of the area in which a source is located. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160–51.166.

On June 20, 2011, South Dakota submitted revisions for approval by EPA into the South Dakota SIP, including some regulations specific to the South Dakota PSD permitting program. The submittal proposes to revise the PSD major source definition so that it applies to any air pollutant ''subject to regulation as required by EPA'' (Section 74:36:01:08(2)). The submittal also proposes to add the six GHGs designated by EPA as regulated air pollutants to the definition of regulated air pollutant (Section 74:36:01:15(6)). These definitions may also be applied to permitting synthetic minor GHG sources, therefore, we are proposing to approve both of those changes in South Dakota's air program Definitions. Outside of the PSD program, the SIP submittal proposes in Section 74:36:01:01, Definitions, to add ''(73) ''Subject to regulation'' as defined in 40 CFR Section 70.2 (July 1, 2009), as revised in publication 75 FR 31607 (June 3, 2010), in accordance with EPA requirements.'' We are not taking action on that part of the submittal because it applies to the title V operating permit program which is not part of the SIP.

The State generally implements the PSD program by incorporating by reference (with certain modifications) the federal PSD program in 40 CFR 52.21. (See Chapter 74:36:09:02, Prevention of Significant Deterioration). The submittal revises the State's PSD program by incorporating by reference revisions to 40 CFR 52.21 promulgated by EPA in the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,'' 75 FR 31514 (June 3, 2010). Specifically, the revision cites the regulatory changes on pages 31606 and 31607 in the Tailoring Rule, which contain (among other things) the revisions to 40 CFR 52.21 promulgated in the Tailoring Rule. We propose to approve that revision.

The PSD section of the State rule includes a rescission clause that states, ''If EPA stays or withdraws the regulation of greenhouse gases as identified in publication 75 FR 31606 and 31607 (June 3, 2010), or a court issues an order vacating or otherwise invalidating EPA's regulation of greenhouse gases for any reason, the regulation of greenhouse gases by Article 74:36 are void as of the date of such administrative or judicial action and shall have no further force and effect.'' (Section 74:36:09:02(8)). As explained below, EPA proposes to disapprove this language as inconsistent with the CAA.

These proposed revisions 1) establish that GHG is a regulated pollutant under South Dakota's PSD program, and 2) establish emission thresholds for determining which new stationary sources and modification projects become subject to South Dakota's PSD permitting requirements for their GHG emissions consistent with the Tailoring Rule. Today's proposed action presents our rationale for approving these regulations as meeting the minimum federal requirements for the adoption and implementation of PSD SIP permitting programs, and for disapproving the submitted rescission clause language.

II. History of EPA's GHG-Related Actions

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this action. Please see the preambles for the identified GHG-related rulemakings for more information.

Beginning in 2010, EPA undertook a series of actions pertaining to the regulation of GHGs that established the overall framework for today's proposed action on the South Dakota SIP. These actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final

action,[1] the ''Johnson Memo Reconsideration,'' [2] the ''Light-Duty Vehicle Rule,'' [3] and the ''Tailoring Rule.'' [4] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

At the same time, EPA recognized that many states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tons per year (tpy) of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule. Therefore, EPA issued the GHG PSD SIP Narrowing Rule,[5] under which, EPA converted its previous full approval of the affected SIPs, including South Dakota's, to a partial approval and partial disapproval, to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6). Many of those states have since submitted SIP revisions that have established the Tailoring Rule thresholds, and EPA has approved those SIP revisions and rescinded the partial disapprovals.

III. EPA's Analysis of the State's Submittal

South Dakota is currently a SIP-approved state for the PSD program, and has incorporated EPA's 2002 NSR reform revisions for PSD into its SIP. The June 20, 2011 revisions to South Dakota's SIP will make the approved PSD program rules consistent with the GHG PSD SIP Narrowing Rule. As described above, in the Narrowing Rule EPA withdrew its previous approval of the South Dakota PSD program to the extent that it applied to permitting of new or modified major sources below the thresholds set out in the Tailoring Rule. By approving the changes in the June 20, 2011 submittal, the approved PSD program rules will explicitly conform with the SIP as approved under the Narrowing Rule. Specifically, the June 20, 2011 revisions establish thresholds consistent with the Tailoring Rule and Narrowing Rule for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under South Dakota's NSR PSD program.

South Dakota has adopted and submitted regulations that adopt the federal requirements for the permitting of GHG-emitting sources subject to PSD. The proposed revisions incorporate the Tailoring Rule into South Dakota's PSD Permitting Program, and support synthetic minor permitting at stationary sources seeking federally enforceable limits to avoid major source or major stationary source applicability thresholds specific to GHG. The changes revise the definitions of major source and regulated air pollutant, and make the Tailoring Rule effective January 2, 2011. The submittal makes no other changes to the State's approved PSD program. We propose to conclude that the revisions are consistent with the requirements of 40 CFR 51.166, in particular, requirements set out in EPA's final GHG Tailoring Rule, and that the revisions should be approved into South Dakota's SIP.

However, EPA proposes to disapprove the portion of the revision that adds a rescission clause to the SIP. In assessing the approvability of this clause, EPA considered two key factors: (1) Whether the public will be given reasonable notice of any change to the SIP that occurs as a result of the automatic rescission clause, and (2) whether any future change to the SIP that occurs as a result of the automatic rescission clause would be consistent with EPA's interpretation of the effect of the triggering EPA or federal court action (e.g., the extent of an administrative or judicial stay). These criteria are derived from the SIP revision procedures set forth in the CAA and federal regulations.

EPA's consideration of whether any SIP change resulting from the proposed automatic rescission clause would be consistent with EPA's interpretation of the effect of the triggering action on federal regulations is based on 40 CFR 51.105. Under 40 CFR 51.105, ''[r]evisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.'' *See* 40 CFR 51.105. However, the South Dakota rescission clause takes effect immediately upon certain judicial actions without any EPA intervention. The effect of this is that EPA is not given the opportunity to determine the effect and extent of the judicial action; instead, the SIP is modified without EPA's approval. This violates 40 CFR 51.105.

The provision is also insufficient with regard to providing adequate notice to the public. While the State followed applicable notice-and-comment procedures prior to adopting the automatic rescission clause, the public would not receive adequate notice of the modification of the SIP after a triggering judicial action. Without intervening notice by EPA to the public of the effect and extent of the judicial action, its effect and extent (and indeed whether the judicial action triggered the provision at all) would be unclear to the public.

IV. Proposed Action

EPA proposes to approve in part, and disapprove in part, the June 20, 2011 submittal that addresses the permitting of sources of greenhouse gases for incorporation into the South Dakota SIP. Specifically, EPA proposes to approve revisions to Chapter 74:36:09 that incorporates the Tailoring Rule into the State's definitions and requirements for PSD. EPA is proposing to disapprove the provision that would rescind the State's Tailoring Rule revision in certain circumstances. EPA will take separate action on an amendment in the June 20, 2011 submittal to Chapter 74:36:20, Construction Permits for New Sources or Modifications, regarding permits for minor sources.

EPA proposes to approve changes to Definitions, Section 74:36:01:08(2), which revises the major source definition so that it applies to any air pollutant ''subject to regulation as required by EPA,'' and Section 74:36:01:15(6), which adds the six GHGs designated by EPA as regulated air pollutants to the definition of regulated air pollutant. EPA is not taking action on the addition of ''(73) ''Subject to regulation'' as defined in 40 CFR Section 70.2 (July 1, 2009), as revised in publication 75 FR 31607 (June 3, 2010), in accordance with EPA requirements,'' because it applies to the title V

[1] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[2] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[3] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[4] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

[5] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans,'' 75 FR 82536 (December 30, 2010).

permitting program which is not part of the SIP.

V. Statutory and Executive Orders Review

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 proposed action merely approves state law that meets federal requirements and disapproves state law that does not meet federal requirements; when finalized, this action would 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, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

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

Dated: January 29, 2014.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2014–02931 Filed 2–10–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R02–OAR–2013–0592; FRL–9906–06–Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New York State; Redesignation of Areas for 1997 Annual and 2006 24-Hour Fine Particulate Matter and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the New York State Department of Environmental Conservation (NYSDEC). NYSDEC is requesting that EPA redesignate ten counties in the New York State portion of the New York-N.New Jersey-Long Island, NY–NJ–CT nonattainment area from nonattainment to attainment for the 1997 annual and the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Included with its redesignation request, New York submitted a State Implementation Plan (SIP) revision containing a maintenance plan that provides for continued compliance of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. The maintenance plan includes the 2007 attainment year emissions inventory that EPA is proposing to approve in this rulemaking in accordance with the requirements of the Clean Air Act (CAA). EPA had previously determined that the New York portion of the New York-N.New Jersey-Long Island, NY–NJ–CT nonattainment area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Additionally, EPA is proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for $PM_{2.5}$ and Nitrogen Oxides (NO_X).

DATES: Comments must be received on or before March 13, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2013–0592 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: Ruvo.Richard@epa.gov*
3. *Fax:* 212–637–3901
4. *Mail:* Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
5. *Hand Delivery or Courier:* Deliver your comments to: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official business hours is Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2013–0592. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Raymond Forde (*forde.raymond@epa.gov*) concerning emission inventories and Gavin Lau (*lau.gavin@epa.gov*) concerning other portions of the SIP revision, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What are the actions EPA is proposing to take?

On June 27, 2013, the NYSDEC, submitted a package to EPA which included (1) a request to redesignate the New York portion of the New York-N.New Jersey-Long Island, NY–NJ–CT nonattainment area (hereafter referred to as the New York $PM_{2.5}$ nonattainment area or NYNAA), from nonattainment to attainment for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS and (2) a maintenance plan for the NYNAA as a SIP revision to ensure continued attainment through 2025. In a supplemental submission to EPA dated September 18, 2013, NYSDEC submitted additional information clarifying portions of the redesignation request and maintenance plan.

EPA is proposing to take several actions pursuant to the redesignation of the NYNAA for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is proposing to find that the NYNAA meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve New York's request to change the legal definition of the NYNAA from nonattainment to attainment. EPA has previously taken two separate actions redesignating the New Jersey and the Connecticut portion of the New York–N.New Jersey–Long Island, NY–NJ–CT nonattainment area (or NY–NJ–CT nonattainment area) for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS (See 78 FR 54396, September 4, 2013 and 78 FR 58467, October 24, 2013).

EPA is also proposing to approve the maintenance plan for the NYNAA as a revision to the New York SIP. Such approval is one of the criteria in the CAA for redesignating an area to attainment. The maintenance plan is designed to ensure continued attainment in the NYNAA for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS for 10 years after redesignation. The maintenance plan includes the 2007 attainment year, 2017 interim year, and 2025 end year projection emission inventories. EPA is also proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for $PM_{2.5}$ and NO_X.

In this proposed redesignation, EPA takes into account the D.C. Circuit January 4, 2013 decision remanding to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008), Natural Resources Defense Council v. EPA, 706 F.3d 428 (D.C. Cir. 2013).

EPA's analysis for these proposed actions is discussed in Sections VI, VII, and VIII of today's proposed rulemaking action.

II. What is the background for EPA's proposed actions?

A. General

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a three-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a three-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average standard at 15 $\mu g/m^3$ but revised the 24-hour standard to 35 $\mu g/m^3$, based again on the three-year average of the 98th percentile of 24-hour concentrations.

On January 5, 2005, at 70 FR 944, as supplemented on April 14, 2005, at 70 FR 19844, EPA designated the NY–NJ–CT nonattainment area as nonattainment for the 1997 $PM_{2.5}$ air quality standards. In that action, EPA defined the nonattainment area to include the following ten New York counties: Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, and Westchester.

On July 7, 2009, the D.C. Circuit, Catawba County, North Carolina, et al., v. EPA, 571 F.3d 20, (D.C. Cir. 2009), ruled on consolidated petitions for review of area designations for the 1997 $PM_{2.5}$ NAAQS filed by several states, counties, and industrial entities. The DC Circuit denied petitions for review in all respects except for the designation of Rockland County, which was remanded to EPA.[1]

On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard set in 2006, designating the NY–NJ–CT nonattainment area as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS. The nonattainment area boundaries for NY–NJ–CT nonattainment area for the 2006 $PM_{2.5}$ NAAQS were identical to the boundaries for the 1997 $PM_{2.5}$ NAAQS, including all tens counties that were previously designated nonattainment in 2005. The November 13, 2009 action also clarified that the NY–NJ–CT

[1] The court found the Rockland County nonattainment designation was inconsistent with the approach EPA used in other designations.

nonattainment area was classified as unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ NAAQS. EPA did not promulgate designations for the annual average NAAQS promulgated in 2006 since that NAAQS was essentially identical to the 1997 annual $PM_{2.5}$ NAAQS.

This proposed action addresses the designation for the annual NAAQS promulgated in 1997 and the 24-hour NAAQS promulgated in 2006 for the NYNAA and also addresses the D.C. Circuit's, Catawba County, 571 F.3d 20, remand of the Rockland County designation.

In the final rulemaking action dated November 15, 2010 (75 FR 69589), EPA determined that the entire NY–NJ–CT nonattainment area had attained the 1997 annual $PM_{2.5}$ NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data for the period of 2007–2009.

On December 31, 2012 (77 FR 76867), EPA finalized the determination that the entire NY–NJ–CT nonattainment area had attained the 2006 24-hour $PM_{2.5}$ NAAQS, based upon quality assured, quality controlled, and certified ambient air monitoring data that showed that the area had monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 monitoring periods.

The 3-year ambient air quality data for the last four 3-year monitoring periods (2007–2009, 2008–2010, 2009–2011, and 2010–2012) indicated no violations for the 1997 annual $PM_{2.5}$ and 2006 $PM_{2.5}$ NAAQS. As a result, on June 12, 2013 New York requested redesignation of the NYNAA to attainment for the 1997 annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements under 107(d)(3)(E).

B. Clean Air Interstate Rule (CAIR) and Cross State Air Pollution Rule (CSAPR or the Transport Rule)

On May 12, 2005, EPA published CAIR, which requires significant reductions in emissions of SO_2 and NO_X from electric generating units (EGUs) to limit the interstate transport of these pollutants and the ozone and $PM_{2.5}$ they form in the atmosphere. See 70 FR 25162. The D.C. Circuit initially vacated CAIR, North Carolina v. EPA, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, North Carolina v. EPA, 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the D.C. Circuit's decision, EPA issued the Transport Rule, also known as CSAPR, to address interstate transport of NO_X and SO_2 in the eastern United States. See 76 FR 48208 (August 8, 2011).

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in EME Homer City Generation, L.P. v. EPA (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City,* 696 F.3d at 38. The DC Circuit denied all petitions for rehearing on January 24, 2013.

On March 29, 2013, the U.S. Solicitor General petitioned the Supreme Court to review the DC Circuit Court's decision on CSAPR. On June 24, 2013, the Supreme Court granted the petition to review the decision. The Supreme Court's decision to review the case does not alter the current status of CAIR or CSAPR.

New York's submittal and EPA modeling demonstrate that the attainment of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS will be maintained with or without the implementation of CAIR or CSAPR. To the extent that attainment is due to emission reductions associated with CAIR, EPA is proposing to determine that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and175A.

As directed by the DC Circuit, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR.

New York's SIP revision lists CAIR among the Federal trading programs that have resulted in permanent and enforceable emissions reductions that have led to attainment of the $PM_{2.5}$ NAAQS. New York rules, 6 NYCRR Parts 243, 244, and 245, effective on October 19, 2007, implement the CAIR trading program in New York. CAIR was, thus, in place and achieving emission reductions when the NY–NJ–CT nonattainment area began monitoring attainment of the 1997 annual and the 2006 24-hour $PM_{2.5}$ standards during the 2007–2009 period. The quality assured, certified monitoring data continues to show the area in attainment with the 1997 and 2006 $PM_{2.5}$ standards through 2012, and through 2013 with preliminary data.

In addition, air quality modeling analysis conducted during the CSAPR rulemaking process also demonstrated that the counties in the NY–NJ–CT nonattainment area will have $PM_{2.5}$ levels below the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS in both 2012 and 2014 without taking into account emissions reductions from CAIR or CSAPR. See ''Air Quality Modeling Final Rule Technical Support Document'',[2] App. B, B–18, B–19. This modeling is also available in the docket for this proposed redesignation.

In sum, neither the current status of CAIR nor the current status of CSAPR affects any of the criteria for proposed approval of this redesignation request for the NYNAA.

III. What are the criteria for redesignation?

Under the CAA, designations can be revised if sufficient data is available to warrant such revisions. Section 107(d)(3)(E) of the CAA identifies five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

1. The area must have attained the applicable NAAQS.
2. The area must meet all applicable requirements under section 110 and part D of the CAA.
3. The area must have a fully approved SIP under section 110 (k) of the CAA.
4. The air quality improvement must be permanent and enforceable.
5. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16,1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air

[2] The document is available at *http://www.epa.gov/crossstaterule/pdfs/AQModeling.pdf.*

Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

4. ''Implementation Guidance for the 2006 24-hour $PM_{2.5}$ NAAQS,'' Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, March 2, 2012.

IV. What is the effect of EPA's proposed actions?

Final approval of the redesignation request would change the official designation of the NYNAA to attainment for the 1997 annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS, found at 40 CFR part 81. It would incorporate into the New York SIP a maintenance plan ensuring continued attainment of the 1997 annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS until 2025. Approval of the 2007 base year emissions inventory, which is part of the maintenance plan, will satisfy the inventory requirements under section 172(c)(3) of the CAA. EPA is also proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for $PM_{2.5}$ and NO_X.

V. What is the effect of the January 4, 2013 D.C. Circuit Decision Regarding $PM_{2.5}$ Implementation under Subpart 4?

A. Background

As discussed above, on January 4, 2013, in Natural Resources Defense Council v. EPA (hereafter referred to as *NRDC* v. *EPA*), the DC Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of Title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of Part D of Title I. Although the Court's ruling did not directly address the 2006 $PM_{2.5}$ standard, EPA is taking into account the Court's position on subpart 4 and the 1997 $PM_{2.5}$ standard in evaluating redesignations for the 2006 standard.

B. Subpart 4 Requirements and New York's Redesignation Request

In this portion of the proposed redesignation, EPA addresses the effect of the Court's January 4, 2013 ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the Court's January 4, 2013 decision does not prevent EPA from redesignating the NYNAA to attainment for the 1997 and 2006 $PM_{2.5}$ NAAQS. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA demonstrates that even if the subpart 4 requirements were applied to the New York redesignation request and disregards the provisions of its 1997 $PM_{2.5}$ implementation rule recently remanded by the Court, New York's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the NYNAA, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. See Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM_{10} [3] nonattainment areas, and under the Court's January 4, 2013 decision in *NRDC* v. *EPA,* these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP), emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the NY–NJ–CT nonattainment area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1. In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a prevention of significant deterioration (PSD) program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under

[3] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller.

subpart 4,[4] when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, ''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

It is evident that even if we were to consider the Court's January 4, 2013 decision in *NRDC* v. *EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively and thus are now past due, those requirements do not apply to an area that is attaining the 1997 and 2006 $PM_{2.5}$ standards, for the purpose of evaluating a pending request to redesignate the area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA's authority to interpret ''applicable requirements'' in the redesignation context. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA's prior ''Clean Data Policy'' rulemakings for the PM_{10} NAAQS, also governed by the requirements of subpart 4, explain EPA's reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. *See* ''Determination of Attainment for Coso Junction Nonattainment Area,'' (75 FR 27944, May 19, 2010). *See also* Coso Junction proposed PM_{10} redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this action, EPA proposes to determine that the NYNAA continues to attain the 1997 and 2006 $PM_{2.5}$ standards. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

VI. What is EPA's analysis of New York's redesignation request?

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on June 27, 2013, NYSDEC submitted a redesignation request and maintenance plan for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS for NY–NJ–CT nonattainment areas. On September 18, 2013, NYSDEC submitted additional materials to supplement the redesignation request.

The following is a description of how the state has fulfilled each of the CAA redesignation requirements.

A. Attainment

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). In this action, EPA is proposing to determine that the NY–NJ–CT nonattainment area is continuing to attain the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

1997 Annual $PM_{2.5}$ NAAQS

An area may be considered to be attaining the 1997 annual $PM_{2.5}$ NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.7 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of annual means must be less than or equal to 15 $\mu g/m^3$ at all relevant monitoring sites in the subject area. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors meet data completeness requirements when ''at least 75 percent of the scheduled sampling days for each quarter have valid data''. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

As noted in Section II.A. above, EPA has finalized the determination that the NY–NJ–CT nonattainment area had attained the 1997 annual $PM_{2.5}$ NAAQS. (75 FR 69589, November 15, 2010). NYSDEC submitted ambient air monitoring data showing $PM_{2.5}$ concentrations attaining the annual $PM_{2.5}$ NAAQS for the 2007–2009 and 2008–2010 time periods. EPA has also reviewed more recent quality-assured data for the NY–NJ–CT nonattainment area and found that the NYNAA continued to attain the 1997 annual $PM_{2.5}$ NAAQS through 2012.[5]

Table 1, below, shows the four most recent design values by county (i.e. 3-year average) of annual mean $PM_{2.5}$ concentrations) for the 2007–2009, 2008–2010, 2009–2011, and 2010–2012 time periods for the 1997 annual $PM_{2.5}$ NAAQS for the NY–NJ–CT $PM_{2.5}$ nonattainment area monitors.

[4] i.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

[5] Preliminary monitoring data for the first three quarters of 2013 also indicates continued attainment.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE NY–NJ–CT 1997 ANNUAL $PM_{2.5}$NAAQS NONATTAINMENT AREA (μG/M³)

[The 1997 annual $PM_{2.5}$ NAAQS is 15.0 μg/m³]

County	AQS Monitor ID	3-Year design values			
		2007–2009	2008–2010	2009–2011	2010–2012
NEW YORK:					
Bronx	36–005–0080/110	13.9	12.5	11.9	9.8
Kings	36–047–0122	12.2	10.8	10.3	9.9
Nassau	36–059–0008	10.3	9.5	8.9	INC
New York	36–061–0128/0134	12.1	12.1	11.7	11.8
Orange	36–071–0002	9.3	8.5	8.2	8.1
Queens	36–081–0124	10.6	10.0	9.4	9.1
Richmond	36–085–0055	11.6	10.5	9.8	9.7
Rockland	NM	NM	NM	NM	NM
Suffolk	36–103–0002	9.7	8.9	8.4	8.4
Westchester	36–119–1002	10.6	9.6	9.1	INC
NEW JERSEY:					
Bergen	34–003–0003	11.3	9.8	9.2	9.2
Essex	34–0013–003	INC	INC	INC	9.5
Hudson	34–017–2002	13.1	11.6	11.1	11.1
Mercer	34–021–0008	10.8	10.0	9.7	9.5
Middlesex	34–023–0006	10.4	8.8	7.9	8.0
Monmouth	NM	NM	NM	NM	NM
Morris	34–027–0004	9.6	8.7	8.5	8.4
Passaic	34–031–0005	11.3	9.8	9.3	9.3
Somerset	NM	NM	NM	NM	NM
Union	34–039–0006/2003	11.6	10.3	9.6	9.7
CONNECTICUT:					
Fairfield	09–001–0010	11.3	10.0	9.4	9.4
New Haven	09–009–1123	11.4	10.3	9.6	9.4

INC—Counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.
NM—No monitor located in county.

Based on air monitoring data through 2012, EPA concludes that N–NJ–CT nonattainment area is continuing to attain the 1997 annual $PM_{2.5}$ NAAQS. Therefore, EPA proposes that the statutory criterion for attainment of the 1997 annual $PM_{2.5}$ NAAQS (40 CFR 50.7 and Appendix N of part 50) has been met.

2006 24-hour $PM_{2.5}$ NAAQS

An area may be considered to be attaining the 2006 24-hour $PM_{2.5}$ NAAQS if it meets the NAAQS as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 μg/m³ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's AQS. The monitors meet data completeness requirements when ''at least 75 percent of the scheduled sampling days for each quarter have valid data.'' The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

EPA previously finalized the determination that the NY–NJ–CT nonattainment area had attained the 2006 24-hour $PM_{2.5}$ NAAQS, as noted in Section II.A. (77 FR 76867, December 31, 2012). The ambient air monitoring data submitted by New York shows $PM_{2.5}$ concentrations attaining the 24-hour $PM_{2.5}$ NAAQS for 2007–2009 and 2008–2010 time periods. EPA has also reviewed more recent quality-assured data for the NY–NJ–CT nonattainment area and found that the NYNAA continued to attain the 2006 24-hour $PM_{2.5}$ NAAQS through 2012.[6]

Table 2, below, shows the design value by county for the 98th percentile 24-hour $PM_{2.5}$ concentrations for the 2007–2009, 2008–2010, 2009–2011, and 2010–2012 time periods for the 2006 24-hour $PM_{2.5}$ NAAQS for the NY–NJ–CT $PM_{2.5}$ nonattainment area monitors.

[6] Preliminary monitoring data for the three quarters of 2013 also indicates continued attainment.

TABLE 2—DESIGN VALUE CONCENTRATIONS FOR THE NY–NJ–CT 2006 24-HOUR $PM_{2.5}$ NAAQS NONATTAINMENT AREA ($\mu G/M^3$)

[The 24-hour $PM_{2.5}$ NAAQS is 35 $\mu g/m^3$]

County	AQS Monitor ID	3-Year design values			
		2007–2009	2008–2010	2009–2011	2010–2012
NEW YORK:					
Bronx	36–005–0080/133	33	29	28	24
Kings	36–047–0122	30	27	25	24
Nassau	36–059–0008	28	25	23	INC
New York	36–061–0134/0079	32	29	28	26
Orange	36–071–0002	26	24	23	23
Queens	36–081–0124	30	28	26	24
Richmond	36–085–0055	29	26	24	24
Rockland	NM	NM	NM	NM	NM
Suffolk	36–103–0002	26	25	23	22
Westchester	36–119–1002	29	28	25	INC
NEW JERSEY:					
Bergen	34–003–0003	31	28	25	23
Essex	34–013–0003	INC	INC	INC	23
Hudson	34–017–1003	32	29	28	26
Mercer	34–021–0008	29	27	26	25
Middlesex	34–023–0006	27	23	20	19
Monmouth	NM	NM	NM	NM	NM
Morris	34–027–3001	26	23	23	21
Passaic	34–031–0005	30	26	25	24
Somerset	NM	NM	NM	NM	NM
Union	34–039–0006	31	27	24	24
CONNECTICUT:					
Fairfield	09–001–0010/1123	31	28	26	24
New Haven	09–009–0027	31	29	28	25

NM—No monitor located in county.
INC—All counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

Based on air monitoring data through 2012, EPA concludes that the NY–NJ–CT nonattainment area is continuing to attain the 2006 24-hour $PM_{2.5}$ NAAQS. Therefore, EPA proposes that the statutory criterion for attainment of the 2006 24-hour $PM_{2.5}$ NAAQS (40 CFR 50.13 and Appendix N of part 50) has been met.

B. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

EPA has determined that the NYNAA has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that, upon final approval of the 2007 attainment year emissions inventory, as discussed below in this proposed rulemaking, it will have met all applicable SIP requirements under part D of Title I of the CAA, in accordance with CAA section 107(d)(3)(E)(v). In addition, EPA is proposing to find that all applicable requirements of the New York SIP for purposes of redesignation have been approved in accordance with CAA section 107(d)(3)(E)(ii).

1. Section 110 SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in CAA section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and CAIR, May 12, 2005 (70 FR 25162). However, the CAA section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other CAA section 110(a)(2) elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be

subject to these requirements after it is redesignated. EPA concludes that the CAA section 110(a)(2) and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request, and that CAA section 110(a)(2) elements not linked in the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000) and in the Pittsburgh, Pennsylvania redesignation (66 FR 53099, October 19, 2001).

New York submitted Section 110 ''infrastructure SIPs'' required under CAA section 110(a)(2) to EPA for the 1997 $PM_{2.5}$ NAAQS (dated October 2, 2008) and 2006 $PM_{2.5}$ NAAQS (dated March 15, 2010). EPA has reviewed the New York SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes for redesignating the NYNAA to attainment for the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS. EPA took final action approving New York's infrastructure SIP submittals on June 20, 2013 (78 FR 37122). The requirements under section 110(a)(2) of the CAA are, however, statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the NYNAA. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of New York's $PM_{2.5}$ redesignation request.

2. Title I, Part D Nonattainment Requirements

Subpart 1 of part D of Title I of the CAA sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 and 2006 $PM_{2.5}$ NAAQS were designated under this subpart of the CAA, and the requirements applicable to them are contained in sections 172 and 176. EPA's analysis of the particulate-matter-specific provisions of Subpart 4 of part D of Title I as a result of the January 4, 2013 D.C. Circuit decision is discussed earlier in this notice.

Section 172 Requirements

Under CAA section 172, states with nonattainment areas must submit plans providing for timely attainment and meet a variety of other requirements. As mentioned, EPA has previously finalized determinations that the NY–NJ–CT nonattainment areas had attained the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS.

New York's obligation to submit an attainment demonstration, RACT/RACM, RFP, contingency measures, and other planning SIPs related to the attainment of the $PM_{2.5}$ NAAQS has been suspended due to EPA's determination that the NY–NJ–CT nonattainment area has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. New York submitted a SIP revision ($PM_{2.5}$ attainment plan) for attaining the 1997 annual $PM_{2.5}$ NAAQS on October 27, 2009. The requirements to submit $PM_{2.5}$ attainment plans were suspended as a result of the determination of attainment and it was not necessary for New York to submit a plan for the 2006 24-hour $PM_{2.5}$ NAAQS. The only remaining requirement to be considered after the determination of attainment of the $PM_{2.5}$ NAAQS is the emission inventory required under CAA section 172(c)(3).

The General Preamble for Implementation of Title I also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining the standard. See General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Because attainment has been reached for the NY–NJ–CT nonattainment area, no additional measures are needed to provide for attainment. CAA section 172(c)(1) requirements for an attainment demonstration, and RACT/RACM are no longer considered to be applicable requirements for as long as the area continues to attain the standard until redesignation. See 40 CFR 51.1004(c). The RFP requirement under CAA section 172(c)(2) are similarly not relevant for purposes of redesignation.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of the maintenance plan submitted by New York on June 27, 2013, the State has submitted an attainment year inventory that meets this requirement. For purposes of the $PM_{2.5}$ NAAQS, the emissions inventory should address not only direct emissions of $PM_{2.5}$, but also emissions of all precursors with the potential to participate in $PM_{2.5}$ formation, i.e., SO_2, NO_X, VOC and ammonia (NH_3). The 2007 attainment year emissions inventory submitted by New York in the June 27, 2013 submission addressed $PM_{2.5}$, SO_2, NO_X, VOC and NH_3 emissions.

The emissions cover the general source categories of point sources, area sources, onroad sources and nonroad sources. The proposed approval of the 2007 attainment year emissions inventory in this rulemaking action will, when finalized, meet the requirements of CAA section 172(c)(3).

The 2007 emissions inventory was prepared by NYSDEC and is presented in Table 5 located in Section VII.E.2(a), Attainment Emissions Inventory, of this action. Table 5 shows the 2007 base year $PM_{2.5}$, NO_X, SO_2, VOC and NH_3 annual emission inventories for the NYNAA. EPA's detailed evaluation of the base year inventories for all pollutants is also addressed in Section VII.E.2.(a), Attainment Emissions Inventory, of this action. A copy of the Technical Support Document [7] submitted by New York is included in the TSD of the New York SIP submission.

Section 172(c)(4) of the CAA requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and CAA section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since the PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in the memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994 entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' New York's approved $PM_{2.5}$ PSD program will become

[7] AMEC and SRA for MARAMA Technical Support Document for the Development of the 2007 Emission Inventory for PM Nonattainment Counties in the MANE–VU Region Version 3.3. AMEC Environment and Infrastructure and SRA International, Inc for Mid-Atlantic Regional Air Management Association (MARAMA), January 23, 2012.

effective in the NYNAA upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached in the NY–NJ–CT nonattainment area, no additional control measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the New York SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

CAA section 172(c)(9) provides that SIPs in nonattainment areas ''shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].'' This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Because attainment has been reached for the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS, contingency measures are not applicable for redesignation.

Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine transportation conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act. The requirement to determine general conformity applies to all other federally supported or funded projects. State transportation conformity SIP revisions must be consistent with Federal transportation conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.[8]

EPA interprets the conformity[9] SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); see also 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida).

C. Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA requires that for an area to be redesignated the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Upon final approval of New York's 2007 attainment year emissions inventory, EPA will have fully approved the SIPs for the NYNAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS under section 110(k) for all requirements applicable for purposes of redesignation.

EPA is proposing to approve the 2007 attainment year emissions inventory (submitted as part of its maintenance plan) for the NYNAA as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Therefore, New York will have satisfied all applicable requirements under part D of Title I of the CAA.

D. The Air Quality Improvement Must Be Permanent and Enforceable

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA proposes to determine that the air quality improvement in the NYNAA is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state adopted measures.

As indicated in Section VI.A., the NY–NJ–CT nonattainment area came into attainment with the 1997 annual and the 2006 24-hour $PM_{2.5}$ NAAQS beginning with the 2007–2009 time period. The area has remained in attainment and the air quality has improved. As shown in the State's submittal[10], the $PM_{2.5}$ maximum and average concentrations for NYNAA monitors shows a downward trend over the past decade. Additionally the State's submittal[11] demonstrates that New York's maximum design values in the NY–NJ–CT nonattainment area have not exceeded the annual NAAQS since 2007, New Jersey's maximum design values have not exceeded the annual NAAQS since 2006, and Connecticut's maximum design value has not exceeded the annual NAAQS since 2003. For the 2006 24-hour $PM_{2.5}$ NAAQS, New York's and New Jersey's maximum design values have not exceeded the NAAQS since 2008, and Connecticut's maximum design value has not exceeded the NAAQS since 2007.

As demonstrated in the state's maintenance plan, the improvement in air quality can be attributable to the Federal and SIP approved State control measures that provide for $PM_{2.5}$, and $PM_{2.5}$ precursors emission reductions from 2002 through $PM_{2.5}$ NAAQS attainment beginning in 2007–2009 (see Table 3). The tables also indicate the maintenance plan measures with quantifiable emission reductions that New York is relying on to demonstrate maintenance.

TABLE 3—LIST OF POST-2002 NEW YORK CONTROL MEASURES FOR $PM_{2.5}$ AND PRECURSORS

Name of control measure	Type of measure	Targeted pollutants					Maintenance plan measure	State citation
		NO_X	$PM_{2.5}$	SO_2	VOC	NH_3		
Architectural and Industrial Maintenance Coatings.	State				X			6 NYCRR 205.

[8] Guidance on transportation conformity SIPs can be found at: *http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf.*

[9] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from MVEBs that are established in control strategy SIPs and maintenance plans.

[10] See New York' redesignation submission, Figures 5 thru 8

[11] See New York' redesignation submission, Table 6

TABLE 3—LIST OF POST-2002 NEW YORK CONTROL MEASURES FOR $PM_{2.5}$ AND PRECURSORS—Continued

Name of control measure	Type of measure	Targeted pollutants					Maintenance plan measure	State citation
		NO_X	$PM_{2.5}$	SO_2	VOC	NH_3		
Reasonably Available Control Technology for Major Facilities.	State	X			X			6 NYCRR 212.10.
Solvent Metal Cleaning Process.	State				X			6 NYCRR 226.
Reasonably Available Control Technology for Major Facilities of Oxides of Nitrogen.	State	X					X	6 NYCRR 227–2.
Portland Cement Plants.	State	X						6 NYCRR 220–1.
Glass Plants	State	X						6 NYCRR 220–2.
Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers.	State				X		X	6 NYCRR 228.
Graphic Arts	State				X			6 NYCRR 234.
Portable Fuel Container Spillage Control.	State				X		X	6 NYCRR 239.
New York I/M Program	State	X			X		X	6 NYCRR 217.
Residential Woodstove NSPS.	Federal rule	X	X		X		X	
CAIR	Federal rule	X		X				
Federal Tier 2 Gasoline Sulfur Program.	Federal rule			X			X	
Federal Clean Diesel Program.	Federal rule	X	X	X	X		X	
Control of Emissions from Nonroad Large Sparking Engines, and Recreational Engines (Marine and Land-based).	Federal rule	X	X		X		X	
Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel.	Federal rule	X	X	X			X	

Table 4 shows Federal and State post 2007–2009 maintenance plan measures with creditable emissions reductions, including measures that have been adopted, but not yet implemented, that New York is relying on to demonstrate maintenance. New York's submittal also included additional measures to provide additional assurance that New York's air quality will continue to comply with the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

TABLE 4—LIST OF 2007–2009 NEW YORK MAINTENANCE PLAN CONTROL MEASURES FOR $PM_{2.5}$ AND PRECURSORS

Name of control measure	Type of measure	Targeted pollutants					Maintenance plan measure	State citation
		NO_X	$PM_{2.5}$	SO_2	VOC	NH_3		
EGU- Oil	State	X		X	X		X	6 NYCRR Part 227.
EGU- Gas	State	X			X		X	6 NYCRR Part 227 and 228.
Low Sulfur Distillate and Residual Fuel Strategies.	State		X	X			X	6 NYCRR Parts 225.
Asphalt	State				X		X	6 NYCRR Part 241.
Consumer Products	State				X		X	6 NYCRR Parts 231.
Oil Combustion Sources.	State				X		X	6 NYCRR Parts 227.
Natural Gas Combustion.	State				X		X	6 NYCRR Parts 227.
New York Combustion Regulation.	State	X	X	X			X	6 NYCRR Parts 227.
New York Low Emission Vehicle Program (LEV II).	State	X	X		X		X	6 NYCRR Part 218.

TABLE 4—LIST OF 2007–2009 NEW YORK MAINTENANCE PLAN CONTROL MEASURES FOR $PM_{2.5}$ AND PRECURSORS—Continued

Name of control measure	Type of measure	Targeted pollutants					Maintenance plan measure	State citation
		NO_X	$PM_{2.5}$	SO_2	VOC	NH_3		
Heavy Duty Highway Rule-Vehicle Standards and Diesel Fuel Sulfur Co.	Federal Rule ...	X	X	X	X	.....	X	
Nonroad Diesel Engines.	Federal Rule ...	X	X	.....	X	.....	X	
Locomotive Engines and Marine Compression-Ignition Engines Less than 30 Liters per Cylinder.	Federal Rule ...	X	X	.....	X	.....	X	
Phase 2 Standards for Non-Road Spark Ignition Non-handheld Engines at or below 19 kW.	Federal Rule ...	X	.....	.....	X	.....	X	
Phase 2 Standards for Small Spark Ignition Handheld Engines at or below 19 kW.	Federal Rule ...	X	.....	.....	X	.....	X	
Recreational Vehicles (includes snowmobiles, off-highway motorcycles, and all-terrain vehicles).	Federal Rule ...	X	.....	.....	X	.....	X	
Gasoline Boats and personal watercraft, outboard engines.	Federal Rule ...	X	X	.....	X	.....	X	

Based on the information presented above, New York has adequately demonstrated that the decline in $PM_{2.5}$ concentrations was due to permanent and enforceable control measures. EPA proposes to find that the combination of existing EPA-approved SIP and Federal measures contribute to the permanence and enforceability of reduction in ambient $PM_{2.5}$ levels that have allowed New York to attain the 1997 $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS.

E. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the NYNAA to attainment for the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, New York submitted a SIP revision to provide for maintenance for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

1. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations. The Calcagni Memorandum, dated September 4, 1992, provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: (1) An attainment emissions inventory; (2) a maintenance demonstration showing maintenance for 10 years; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations. As is discussed more fully below, EPA proposes to find that the New York maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the New York SIP.

2. Analysis of the Maintenance Plan

The maintenance demonstration must demonstrate effective safeguards of the NAAQS for at least 10 years following the redesignation showing that future $PM_{2.5}$ and precursor emissions will not exceed the level of the attainment year.

States are required to submit the following inventory elements to satisfy the redesignation/maintenance plan inventory requirements:

Maintenance Plan Attainment Inventory. Maintenance plan provisions include a comprehensive, accurate, and current emissions inventory from all point, area, nonroad and onroad mobile sources for the $PM_{2.5}$ nonattainment area. States are required to develop an attainment inventory to identify the level of emissions in the area that is sufficient to attain the NAAQS. This inventory should include the emissions during the time period associated with the monitoring data showing attainment.

Maintenance Plan Interim Year Inventory. At a minimum, emissions

should be projected to a midpoint year between the attainment year and the endpoint/10-year inventory. This inventory provides a summary of controlled emissions for point, area, nonroad and onroad mobile sources for the $PM_{2.5}$ nonattainment area for the interim year inventory.

Maintenance Plan Projected Final Year Inventory. Emissions should be projected from the attainment year to at least 10 years into the future. This inventory provides a summary of controlled emissions for point, area, nonroad and onroad mobile sources at the endpoint/10-year period.

For the NYNAA, 2007 emissions were projected to 2017 and 2025. New York must demonstrate, with the control programs identified in this SIP, that total 2017 or 2025 projected emissions do not exceed the 2007 emission levels.

Below are EPA's review and evaluation of the maintenance demonstration for the two areas. Additional detail is provided in the TSD.

(a) Attainment Emissions Inventory

Selection of 2007 Base Year as the Maintenance Plan Attainment Year Inventory

An attainment inventory is comprised of the emissions during the time period associated with the monitoring data showing attainment. New York selected 2007 as the attainment inventory year for the NYNAA for the 1997 annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ standards.

For the 1997 $PM_{2.5}$ annual standard, the NYNAA had monitored attainment based on air monitoring data for 2007–2009. For the 2006 24-hour $PM_{2.5}$ standard, the NYNAA had monitored attainment for 2007–2009, and 2008–1010. EPA proposes to concur that the 2007 base year emissions inventory is appropriate as the attainment year inventory for the $PM_{2.5}$ redesignation maintenance plan.

Criteria for Approval of the Maintenance Plan Attainment Year Inventory

There are general and specific components of an acceptable emission inventory. In general, the State must submit a revision to its SIP and the emission inventory must meet the minimum requirements for reporting by source category.

For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. Evidence that the inventory was quality assured by the state and its implementation documented.
2. The point source inventory must be complete.
3. Point source emissions must have been prepared or calculated according to the current EPA guidance.
4. The area source inventory must be complete.
5. The area source emissions must have been prepared or calculated according to the current EPA guidance.
6. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.
7. The method (e.g., HPMS or a network transportation planning model) used to develop vehicle miles traveled (VMT) estimates must follow EPA guidance. The VMT development methods must be adequately described and documented in the inventory report.
8. The US EPA's Motor Vehicle Emissions Simulator (MOVES) model must be correctly used to produce emission factors for each of the vehicle classes.

EPA's Evaluation of the Maintenance Plan Attainment Year Inventory

Quality Assurance Plan Implementation

The Quality Assurance (QA) plan was implemented for all portions of the inventory. QA checks were performed relative to data collection and analysis to avoid the double counting of emissions from point, area and mobile sources. QA/QC checks were conducted to ensure accuracy of units, unit conversions, transposition of figures, and calculations.

Point and Area Source Inventories

New York's inventory includes major point sources for each pollutant in tons per year (tpy). The inventory report describes how point and area source activity levels and their associated parameters were developed, and how the data were used to calculate emission estimates. The inventory lists the source categories that are included in (and excluded from) the area source inventory. The report provides referenced documents for activity level and emission factors used. Information on how control efficiencies were derived (with the associated sample calculations) is also provided. Point and area source summary information on detailed county and/or nonattainment area levels, are included in the inventory. Where applicable, annual emissions are provided for $PM_{2.5}$, PM_{10}, NO_X, SO_2, VOC and NH_3 for $PM_{2.5}$ nonattainment areas.

The primary sources of anthropogenic ammonia emissions are two agricultural operations, livestock and fertilizer. Ammonia emissions from livestock and fertilizer were prepared by the EPA using the Carnegie Mellon University (CMU) Ammonia Model, Version 3.6. The model runs are based on 2007 activity levels. Ammonia emissions for industrial refrigeration, composting, and publicly owned treatment works were prepared by the EPA.

Nonroad Mobile Source Inventory

For the NYNAA, the predominant non-road mobile source categories (i.e., agricultural equipment, construction equipment, industrial equipment, airport service equipment, light commercial equipment, lawn and garden equipment, etc.) were developed by using version 2008a of EPA's Nonroad Emissions Equipment Model released by EPA's Office of Transportation and Air Quality (OTAQ). Nonroad mobile source emissions are presented on a source category, county and/or nonattainment area basis. Where applicable, annual emissions are provided for $PM_{2.5}$, PM_{10}, NO_X, SO_2, VOC and NH_3 for the $PM_{2.5}$ nonattainment areas.

Aircraft, Locomotive and Commercial Marine Vessel Inventories

Where applicable, aircraft, locomotive, and commercial marine vessel emissions on a county basis are provided for $PM_{2.5}$, PM_{10}, NO_X, SO_2, VOC and NH_3. Activity level and emissions data for each source category is provided. Aircraft, locomotive and commercial marine vessel source emissions are presented on a source category, county and/or nonattainment area basis. Where applicable, annual emissions are provided for $PM_{2.5}$, PM_{10}, NO_X, SO_2, VOC and NH_3 for $PM_{2.5}$ nonattainment areas.

Onroad Mobile Source Inventory

For the onroad mobile source category, the primary indicator and tool for developing on-road mobile growth and expected emissions are vehicle miles traveled (VMT) and EPA's MOVES model. The 2007 pollutant emission factors were generated by MOVES (with the associated controlled measures applied, where appropriate) and applied to the monthly VMT projections provided by the State. Monthly emissions were then combined to develop annual emission estimates.

MOVES model was used to generate emission factors for VOC, NH_3, $PM_{2.5}$, PM_{10}, NO_X and SO_2 on-road vehicle emission estimates. The report also explains how MOVES emission factors are used, in conjunction with VMT data, to estimate mobile source emissions for the inventoried areas. It provides the

sources for the key inputs into the MOVES model. Key assumptions are also included. The methods used to determine on-road emission estimates are explained in the report. VOC, NH_3, $PM_{2.5}$, PM_{10}, NO_X and SO_2 annual combined on-road mobile emissions by county are provided. Where applicable, annual emissions are provided for VOC, NH_3, $PM_{2.5}$, PM_{10}, NO_X and SO_2 for all areas. The breakdown of annual emissions by highway vehicle classifications is included in the inventory.

Table 5 below shows the 2007 base year $PM_{2.5}$, PM_{10}, NO_X, SO_2, VOC and NH_3 annual emission inventories for the NYNAA.

TABLE 5—2007 NYNAA $PM_{2.5}$ BASE YEAR INVENTORY

[In tons/year]

Source sector	VOC	NO_X	PM_{10}	$PM_{2.5}$	SO_2	NH_3
Point	3,707.01	38,195.94	3,206.28	124,750.31	43,886.32	882.89
Nonpoint	101,481.89	41,899.74	48,054.84	11,621.00	29,513.22	1,960.83
Nonroad	46,026.72	59,512.46	4,170.45	3,899.30	6,052.88	1.96
On-road	71,379.46	149,501.91	9,723.36	6,835.30	982.77	3,484.40
Road Dust	N/A	N/A	3,483.59	1,174.60	N/A	N/A
Total	222,595.08	289,110.05	68,638.51	148,280.52	80,435.19	6,610.08

EPA is proposing to approve the 2007 $PM_{2.5}$ base year inventory for $PM_{2.5}$, PM_{10}, NO_X, SO_2, VOC and NH_3 for the NYNAA. The Maintenance Plan Attainment Year/Base Year 2007 emissions inventory is comprehensive, accurate, and current for all sources of relevant pollutants in the nonattainment area. In all cases the 2007 attainment/base year inventory was done in accordance with EPA guidance. The technical support document provides additional information regarding the review conducted by EPA for the 2007 $PM_{2.5}$ base year inventory. EPA proposes that by approving the 2007 base year inventory for $PM_{2.5}$, PM_{10}, NO_X, SO_2, VOC and NH_3 for the NYNAA, will also serve to establish a PM_{10} emissions inventory specifically for New York County, which satisfies an existing SIP planning requirement for the PM_{10} New York County nonattainment area. See 78 FR 72032, December 2, 2013.

(b) 2017 Interim and 2025 End Year Projection Inventories

Criteria for Approval of the 2017 Interim and 2025 Projection End Year Inventories

There are general and specific components for acceptable 2017 Maintenance Plan Interim and 2025 End Year Projection Inventories. In general, the State must submit a revision to its SIP and the aforementioned components must meet certain minimum requirements for reporting by source category.

For the projection inventories to be acceptable they must pass the following acceptance criteria: [12]

1. Were the 2017 and 2025 projection inventories developed in accordance with the procedures outlined EPA's latest guidance?

2. Were the Plans developed in accordance with EPA's latest guidance for Growth Factors, Projections, and Control Strategies for Reasonable Progress Goal Plans?

EPA's Evaluation of the Maintenance Plan 2017 Interim and 2025 End Year Projection Inventories

A projection of 2007 $PM_{2.5}$ and the associated $PM_{2.5}$ precursors emissions to 2017 and 2025 is required to determine the emission reductions needed for the inventory maintenance plan. The 2017 and 2025 projection year emission inventories are calculated by multiplying the 2007 base year inventory by factors which estimate growth from 2007 to 2017 and 2025. A specific growth factor for each source type in the inventory is required since sources typically grow at different rates.

Major Point Sources

Electric Generating Units (EGU) and Non-Electric Generating Units (Non-EGUs)

For the major point source category, the projected emissions inventories were first calculated by estimating growth in each source category. As appropriate, the 2007 emissions inventory was used as the base for applying factors to account for inventory growth. The point source inventory was grown from the 2007 inventory to 2017 and 2025 for each facility using growth factors utilized in U.S. Department of Energy's (USDOE) Annual Energy Outlook (AEO) projections for 2011 Electric Region and Fuel Source for EGUs and AEO 2010, and State supplied employment data.

Area Sources

For the area source category, New York projected emissions from 2007 to 2017 and 2025 using growth factors generated from USDOE AEO 2010, state supplied population, employment data and vehicle miles travelled (for road dust categories) where appropriate.

Non-Road Mobile Sources

Nonroad Vehicle Equipment Emissions

Non-road vehicle equipment emissions were projected from 2007 to 2017 and 2025 using the EPA's NONROAD 2008a model. This model was used to calculate past and future emission inventories for all nonroad equipment categories except commercial marine vessels, locomotives and aircrafts. Emissions were determined on a monthly basis and combined to provide annual emission estimates.

Aircrafts, Locomotives and Commercial Marine Vessels (CMV)

Aircraft emissions were projected from 2007 to 2017 and 2025 based on landing and takeoff growth factors from the Federal Aviation Administration Terminal Area Forecast System for 2009–2030.

Locomotives emissions were projected from 2007 to 2017 and 2025 based on combined growth and control factors from EPA's RIA in May 2008 for control of locomotive engines and USDOE's 2006 Annual Energy Outlook report.

CMV emissions were projected to 2017 and 2025 using EPA's regulatory impact assessment (RIA) May 2008 RIA report, for category 1 and 2 vessels and EPA's 2009 RIA report for category 3 vessels based on combined growth and control factors.

[12] Emission Inventory Improvement Program guidance document titled *Volume X, Emission Projections,* dated December 1999.

Onroad Mobile Sources

For the onroad mobile source category, the primary indicator and tool for developing on-road mobile growth and expected emissions are VMT and US EPA's mobile emissions model MOVES2010a. Projection years 2017 and 2025 pollutant emission factors were generated by MOVES2010a (with the associated controlled measures applied, where appropriate) and applied to the monthly VMT projections provided by the State. Monthly emissions were then combined to develop annual emission estimates.

Tables 6A–6C show the 2007 base year inventory and 2017 and 2025 projection emission inventories controlled after 2007 using the aforementioned growth indicators/methodologies for the NYNAA.

TABLE 6A—2007 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE NYNAA

Source sector	VOC	NO_X	PM_{10}	$PM_{2.5}$	SO_2	NH_3
Point	3,707.01	38,195.94	3,206.28	124,750.31	43,886.32	882.89
Nonpoint	101,481.89	41,899.74	48,054.84	11,621.00	29,513.22	1,960.83
Nonroad	46,026.72	59,512.46	4,170.45	3,899.30	6,052.88	1.96
On-road	71,379.46	149,501.91	9,723.36	6,835.30	982.77	3,484.40
Road Dust	N/A	N/A	3,483.59	1,174.60	N/A	N/A
Total	222,595.08	289,110.05	68,638.51	148,280.52	80,435.19	6,610.08

TABLE 6B—2017 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE NYNAA

Source sector	VOC	NO_X	PM_{10}	$PM_{2.5}$	SO_2	NH_3
Point	4,131.72	37,066.75	3,193.99	124,290.57	43,484.29	867.60
Nonpoint	93,790.95	36,640.38	34,306.76	9,403.95	4,412.25	1,915
Nonroad	26,408.16	45,197.21	3,040.77	2,809.06	4,212.42	1.12
On-road	33,083.83	68,362.66	7,171.83	3,897.71	939.20	2,340.95
Road Dust	N/A	N/A	2,959.46	954.01	N/A	.....
Tappan Zee Project	N/A	457.00	N/A	N/A	N/A	
Total	157,414.67	187,724.00	50,672.82	141,355.28	53,048.17	5,124.68

TABLE 6C—2025 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE NYNAA

Source sector	VOC	NO_X	PM_{10}	$PM_{2.5}$	SO_2	NH_3
Point	4,153.64	37,645.59	3,201.53	124,294.66	43,596.39	872.33
Nonpoint	94,698.56	35,467.73	38,066.67	10,126.70	4,389.48	1,924.66
Nonroad	24,737.31	42,773.21	2,519.12	2,290.95	4,599.34	1.05
On-road	26,911.17	51,260.81	6,952.22	3,291.09	935.40	2,443.53
Road Dust	N/A	N/A	3,184.31	960.05	N/A	
Total	150,500.68	167,147.34	53,923.85	140,963.45	53,520.61	5,241.57

The permanent and enforceable control measures that are relied on to provide continued attainment of (''maintenance'') of the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS are listed as maintenance plan measures in Tables 3 and 4. New York has already implemented, or adopted rules with future implementation dates, for these measures. Additional information regarding the control measures can be found in the TSD.

EPA is proposing to approve the 2017 interim and 2025 $PM_{2.5}$ projections for the NYNAA. In all cases the 2017 and 2025 projection year inventories were performed in accordance with EPA guidance. For further information concerning EPA's evaluation and analysis of the emission inventories, see the TSD available in the docket.

Tables 6A–6C above shows the inventories for the 2007 attainment year, the 2017 interim year, and the 2025 endpoint year for the NYNAA. Tables 6A–6C shows that when comparing the 2007 inventory to the 2017 and 2025 projected emission inventories the NYNAA is projected to reduce $PM_{2.5}$ precursor emissions substantially. Thus, the 2017 and 2025 projected emissions inventories show that the NYNAA will continue to maintain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS during the 10 year maintenance period.

Maintenance Demonstration Thru 2025

As noted in Section VII.E.1, CAA section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of 10 years following redesignation.'' See Calcagni Memorandum. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. See Calcagni Memorandum.

As discussed in detail above, the State's maintenance plan submission expressly documents that the NYNAA emissions inventories will remain below the attainment year inventories through at least 2025. In addition, for the reasons set forth below, EPA proposes to determine that the State's submission further demonstrates that the NYNAA will continue to maintain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS at least through 2025:

- For the NYNAA, emissions inventory levels for all $PM_{2.5}$ precursors in 2025 are well below the attainment

year inventory levels (see Table 6C). EPA proposes that it is highly improbable that sudden increases would occur that could exceed the attainment year inventory levels in 2025.

• Air quality concentrations for $PM_{2.5}$ are below the NAAQS by 3 μg/m³ or more, indicating a margin of safety in the event of any emissions increase. As shown in Table 1, for the 1997 annual NAAQS of 15 μg/m³, the design value for 2010–2012 for the NY–NJ–CT $PM_{2.5}$ nonattainment area value was 11.8 μg/m³. As shown in Table 2, for the 2006 $PM_{2.5}$ NAAQS of 35 μg/m³, the design value for 2010–2012 for the NY–NJ–CT $PM_{2.5}$ nonattainment area was 26 μg/m³.

• Air quality concentrations showed a significant downward trend over time for the NY–NJ–CT $PM_{2.5}$ nonattainment area for both the 1997 and 2006 $PM_{2.5}$ NAAQS. See Figures 7 and 8 of the New York redesignation request, which is available in the docket.

• Additional emissions reductions will occur through EPA's Mercury and Air Toxics Standards (MATS) [13]. See the TSD for more information regarding MATS, including expected emission reductions.

(d) Monitoring Network

New York currently operates ten Federal reference $PM_{2.5}$ monitors in the NYNAA. In its June 27, 2013 Air Monitoring Network Plan submittal, New York has committed to continued operation of the $PM_{2.5}$ air monitoring network, which meets the requirements of 40 CFR part 58, to verify continue attainment.

New York is required to perform and submit to EPA an assessment of the air monitoring network every 5 years and to review the adequacy of its air monitoring network plan annually through the air monitoring network plan process. Any changes (aside from emergency changes) to the monitoring network, including replacing or moving monitor(s) to new locations, as necessary, would be made through this process. This review process undergoes a public notice period, and is subject to approval by the EPA.

EPA proposes to conclude that the State of New York has met the requirement for continuing to operate an appropriate air monitoring network.

(e) Verification of Continued Attainment

Continued attainment of the $PM_{2.5}$ NAAQS in the state depends, in part, on the state's efforts towards tracking indicators of continued attainment during the maintenance period. New York's plan for verifying continued attainment of the 1997 and 2006 $PM_{2.5}$ standards consists of continued operation of New York's $PM_{2.5}$ air monitoring network in accordance with the requirements of 40 CFR part 58. New York will also verify continued attainment by determining whether emission levels from New York's emission inventory, which is developed every three years, are adequate.

EPA proposes to approve New York's plans for verifying continued attainment of the $PM_{2.5}$ NAAQS.

(f) Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency provisions as EPA deems necessary to ensure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by 175A of the CAA, New York has included contingency provisions in the maintenance plan to address possible future $PM_{2.5}$ air quality problems. However, instead of providing a specific schedule and procedure for the adoption and implementation of contingency measures, New York has identified the list of measures that are currently being pursued by the State, which will be adopted once the New York's rulemaking process has been concluded. New York expects these rules to be adopted within the next few years. These measures include the following:

1. New NO_X and PM control limits on distributed generation sources that are not already subject to state or federal limits (6 NYCRR Part 222—*Distributed Generation*)

2. Additional VOC emission reductions from gasoline dispensing facilities and gasoline transport vehicles (Revisions to 6 NYCRR Part 230—*Gasoline Dispensing Sites and Transport Vehicles*)

New York has also identified two recently adopted rules as contingency measures: Revisions to 6 NYCRR Part 225—*Fuel Composition and Use* (adopted April 5, 2013) [14], and Revisions to 6 NYCRR Part 228—*Surface Coating Processes, Commercial and Industrial Adhesives, Sealants, and Primers* (adopted June 5, 2013) [15]. Although New York included these measures in the list of control measures that the State was relying on to demonstrate maintenance (see Section VI.D. for the list of identified maintenance control measures), and while EPA supports the adoption and implementation of these rules to reduce $PM_{2.5}$ emissions, EPA is proposing that these two measures do not qualify as contingency measures since they have already been adopted and used for maintenance. Regardless, EPA notes that $PM_{2.5}$ levels are sufficiently below the NAAQS indicating a sufficient margin of safety in the event of emissions increase. 2010–2012 design values are below the NAAQS by more than 3 μg/m³ for both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS. Tables 1 and 2 of this proposal show the design values for the NY–NJ–CT $PM_{2.5}$ nonattainment area. EPA proposes that it is unlikely that New York will violate the $PM_{2.5}$ NAAQS, as design values in all counties in the NY–NJ–CT nonattainment area are well below the NAAQS, and continue to decrease.

New York has affirmed that all control measures in the maintenance plan have been implemented, or adopted with future implementation dates. New York has also noted in their submittal that the control measures that have led to expeditious attainment of the annual and 24-hour $PM_{2.5}$ NAAQS are SIP implemented measures that cannot be repealed or relaxed without equivalent reductions from other sources(s) (e.g. CAA section 110 anti-backsliding provisions).

Air quality modeling conducted during the CSAPR rulemaking process, as mentioned previously in Section II. B., demonstrated that the counties in the NY–NJ–CT nonattainment area will have $PM_{2.5}$ levels below the NAAQS in 2014, without taking into account emission reductions from CAIR or CSAPR. The highest $PM_{2.5}$ design values, as determined from the CSAPR modeling, for sites in the NYNAA in 2014 was 13.89 μg/m³ for the 1997 annual NAAQS, and 32.0 ug/m³ for the 24-hour 2006 NAAQS. The ''modeled differential'' between the modeled design values and the $PM_{2.5}$ NAAQS indicates that there are excess emission

[13] 77 FR 9304 (February 16, 2012).

[14] EPA is acting on this rule, which was submitted as a SIP revision on June 12, 2013, in a separate action.

[15] EPA proposed approval on November 20, 2013 (78 FR 69625).

reductions available for contingency based on EPA CSAPR modeling.

EPA proposes to find that New York's maintenance plan includes appropriate contingency measures to promptly correct any violation of the NAAQS that occurs after redesignation.

Maintenance Plan Conclusion

For all of the reasons discussed above, EPA is proposing to approve New York's 1997 annual and 2006 24-hour $PM_{2.5}$ maintenance plan for the NYNAA as meeting the requirements of section 175A of the CAA.

VII. What is EPA's analysis of New York's proposed NO_X and $PM_{2.5}$ motor vehicle emission budgets?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstrations) and maintenance plans create motor vehicle emissions budgets (MVEBs or budgets) for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

New York has developed MVEBs for the NYNAA. The budgets are being established for both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards. New York determined that budgets based on annual emissions of direct $PM_{2.5}$ and NO_X, a precursor, are appropriate for the 2006 24-hour standard because exceedences of the standard were not isolated to one particular season; therefore, the budgets established by this maintenance plan will be used by transportation agencies to meet conformity requirements for both the annual and daily standards.

New York developed these MVEBs, as required, for the last year of its maintenance plan, 2025, and two additional years, 2009 and 2017, for the purpose of establishing budgets for the near-term based on EPA's MOVES model. Previously established and approved MVEBs had been based on MOBILE6.2.

The 2009 MVEBs were developed without an accompanying full emissions inventory. EPA proposes that this approach is approvable and is consistent with attainment and maintenance of both the 1997 annual and 2006 24-hour $PM_{2.5}$ standards because of our earlier determinations that the New York-N.New Jersey-Long Island, NY–NJ–CT nonattainment area had attained the standards based on monitored air quality that included the year 2009 (see Section II.A.).

The MVEBs for the NYNAA are defined in Table 7 below.

TABLE 7—$PM_{2.5}$ AND NO_X MVEBS FOR BOTH THE 1997 ANNUAL AND 2006 DAILY $PM_{2.5}$ NAAQS

[Tons per year]

New York Metropolitan Transportation Council & Orange County Transportation Council	Direct $PM_{2.5}$	NO_X
2009 Motor Vehicle Emissions Budget	5,516.75	106,020.09
2017 Motor Vehicle Emissions Budget	3,897.71	68,362.66
2025 Motor Vehicle Emissions Budget	3,291.09	51,260.81

EPA is proposing to approve the 2009, 2017 and 2025 MVEBs for NO_X and $PM_{2.5}$ for the NYNAA because EPA has determined that the areas will maintain both the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS with on-road vehicle emissions capped at the levels set by the budgets. EPA's review thus far indicates that the budgets meet the adequacy criteria set forth by 40 CFR 93.118(e)(4)(i) through (iv), as follows:

i. The SIP revision was submitted to EPA by the Commissioner of the New York State Department of Environmental Conservation, who is the Governor's designee.

ii. New York State conducted an interagency consultation process involving EPA and USDOT, the New York State Department of Transportation and affected MPOs. All comments and concerns were addressed prior to the final submittal.

iii. The motor vehicle emissions budgets were clearly identified and quantified and are presented here in Table 7.

iv. The 2009, 2017 and 2025 motor vehicle emissions budgets are less than the on-road mobile source inventory for 2007 that was shown to be consistent with attainment of the standards. The applicable state implementation plan demonstrates that the 2017 and 2025 budgets are consistent with maintenance when considered with all other sources for each respective year. The 2009 budgets were developed with all the information for the year 2009, including on-road activity in 2009. Because New York demonstrated attainment in this year to the applicable air quality standards based on monitoring data, the 2009 budgets are therefore consistent with maintenance of the respective standards.

v. The motor vehicle emissions budgets were developed from the on-road mobile source inventories, including all applicable state and Federal control measures. Inputs related to inspection and maintenance and fuels are consistent with New York State's Federally-approved control programs.

The submitted maintenance plan establishes new 2009, 2017 and 2025 budgets to ensure continued maintenance of the standards; therefore there were no revisions made to previously submitted control strategy

implementation plans or maintenance plans.

New York State did not provide emission budgets for SO_2, VOC, and ammonia because it concluded, consistent with the presumptions regarding these precursors in the conformity rule at 40 CFR 93.102(b)(2)(v), which predated and was not disturbed by the litigation on the $PM_{2.5}$ implementation rule, that emissions of these precursors from motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

EPA issued conformity regulations to implement the 1997 $PM_{2.5}$ NAAQS in July 2004 and May 2005 (69 FR 40004, July 1, 2004 and 70 FR 24280, May 6, 2005, respectively). Those actions were not part of the final rule remanded, on January 4, 2013, to EPA by the Court of Appeals for the District of Columbia in *NRDC* v. *EPA,* No. 08–1250, in which the Court remanded to EPA the implementation rule for the $PM_{2.5}$ NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of subpart 1. That decision does not affect EPA's proposed approval of these MVEBs.

First, as noted above, EPA's conformity rule implementing the 1997 $PM_{2.5}$ NAAQS was a separate action from the overall $PM_{2.5}$ implementation rule addressed by the Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC* v. *EPA*.[16] In addition, as discussed in Section II.A, the New York-N.New Jersey-Long Island, NY–NJ–CT nonattainment area is attaining the 1997 annual and 2006 24-hour $PM_{2.5}$ standards with 2010–2012 design values of 11.8 μg/m³ and 26 μg/m³, respectively, which is well below the annual $PM_{2.5}$ NAAQS of 15 μg/m³ and 24-hour NAAQS of 35 μg/m³. The modeling analysis conducted for the RIA for the 2012 PMNAAQS indicates that the design value for this area is expected to continue to decline through 2020. Further, the State's maintenance plan shows continued maintenance through 2025 by demonstrating that NO_X, and direct $PM_{2.5}$ emissions continue to decrease through the maintenance period. For VOC and ammonia, RIA inventories for 2007 and 2020 show that both on-road and total emissions for these pollutants are expected to decrease, supporting the state's conclusion, consistent with the presumptions regarding these precursors in the conformity rule, that emissions of these precursors from motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem and the MVEBs for these precursors are unnecessary. With regard to SO_2, the 2005 final conformity rule (70 FR 24280) based its presumption concerning on-road SO_2 motor vehicle emissions budgets on emissions inventories that show that SO_2 emissions from on-road sources constitute a ''de minimis'' portion of total SO_2 emissions. As shown elsewhere in this proposal, on-road emissions in 2025 are less than 2% of total SO_2 emissions in the area.

EPA is proposing to approve the 2009, 2017 and 2025 direct $PM_{2.5}$ and NO_X motor vehicle emissions budgets for the NYNAA for the 1997 annual and 2006 24-hour PM2 NAAQS. We are proposing approval based on our review that shows that the budgets meet the adequacy criteria found in the transportation conformity rule (40 CFR 93.118(e)(4)) and our thorough review of the maintenance plan that shows that the plan will provide for maintenance of both $PM_{2.5}$ NAAQS through 2025.

VIII. What is the status of EPA's adequacy determination for the proposed NO_X and $PM_{2.5}$ motor vehicle emission budgets for 2009, 2017 and 2025 for New York?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4), and our review of New York's submission in the context of these criteria was presented in Section VII. The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, New York's maintenance plan submission includes NO_X and $PM_{2.5}$ MVEBs for the NYNAA for 2009, 2017 and 2025. EPA reviewed the NO_X and $PM_{2.5}$ MVEBs through the adequacy process. The New York SIP submission, including the NO_X and $PM_{2.5}$ MVEBs, was open for public comment on EPA's adequacy Web site on July 15, 2013, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The public comment period closed on August 14, 2013. EPA did not receive any comments on the adequacy of the MVEBs, nor did EPA receive any requests for the SIP submittal.

A letter was sent to New York State on August 19, 2013, stating that the 2009, 2017 and 2025 MVEB's in New York's SIP for the New York $PM_{2.5}$ nonattainment area were adequate because they are consistent with the required maintenance demonstration. In the letter we noted that there are existing approved and adequate budgets for 2009, but that the 2009 budgets contained in the submitted maintenance plan will be the most recent budget in place to satisfy the latest Clean Air Act requirement and therefore will be the applicable 2009 budget to be used in future transportation conformity determinations for analysis years prior to 2017.

EPA then published in the **Federal Register** its determination on the adequacy of the $PM_{2.5}$ and NO_X 2009, 2017 and 2025 MVEBs for transportation conformity purposes. (78 FR 54177, September 3, 2013). These budgets became effective on September 18, 2013, after which they were required to be used for all future transportation conformity determinations.

[16] The 2004 rulemaking addressed most of the transportation conformity requirements that apply in $PM_{2.5}$ nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of $PM_{2.5}$ precursors in MVEBs. *See* 40 CFR 93.102(b)(2). While none of these provisions were challenged in the NRDC case, EPA also notes that the Court declined to address challenges to EPA's presumptions regarding $PM_{2.5}$ precursors in the $PM_{2.5}$ implementation rule. *NRDC* v. *EPA,* at 27, n. 10.

IX. What action is EPA proposing to take?

EPA is proposing to approve New York's request for redesignating the NYNAA for the 1997 and 2006 $PM_{2.5}$ NAAQS to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA has evaluated New York's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the monitoring data demonstrate that the NYNAA has attained the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS and will continue to attain the standard. Final approval of this redesignation request would change the designation of the NYNAA from nonattainment to attainment for the 1997 $PM_{2.5}$ annual and the 2006 $PM_{2.5}$ 24-hour NAAQS. EPA is also proposing to approve the maintenance plan for the NYNAA as a revision to the New York SIP. EPA is also proposing to approve the 2007 NH_3, VOC, NO_X, PM_{10}, direct $PM_{2.5}$, and SO_2 emission inventories as meeting the comprehensive emissions inventory requirements of section 172(c)(3) of CAA. Additionally, EPA is proposing to approve the 2009, 2017, and 2025 motor vehicle emissions budgets for $PM_{2.5}$ and NO_X. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

X. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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, 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 proposed 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.

List of Subjects in

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: January 16, 2014.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2014–02478 Filed 2–10–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130717632–4070–01]

RIN 0648–BD52

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean

Correction

In proposed rule document 2014–02333 appearing on pages 6876–6880 in the issue of February 5, 2014, make the following correction:

On page 6876, in the second column, in the first and second lines above the **FOR FURTHER INFORMATION CONTACT** heading, ''*RegionalAdministrato.WCRHMS@noaa.gov*'' should read ''*RegionalAdministrator.WCRHMS@noaa.gov*''.

[FR Doc. C1–2014–02333 Filed 2–10–14; 8:45 am]

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Notices

Federal Register

Vol. 79, No. 28

Tuesday, February 11, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Beartooth Ranger District, Custer Gallatin National Forest; Carbon County, Montana; Greater Red Lodge Vegetation and Habitat Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Greater Red Lodge Project is proposed to (1) reduce hazardous fuels; (2) maintain and/or improve resiliency of forest vegetation and grasslands; (3) enhance aspen habitat; and (4) improve water quality. The EIS will consider a no action alternative and three action alternatives that propose treatment on 1000–2000 acres depending upon the alternative. The project area encompasses approximately 21,871 acres north and west of the community of Red Lodge, Carbon County, MT in the vicinity of Red Lodge Creek (10,275 acres) and Nichols/Willow Creek (11,596 acres). The project area is designated Wildland Urban Interface (WUI) in the Carbon County Wildfire Protection Plan, and may be considered a transition zone between developed areas and Inventoried Roadless and the Absaroka-Beartooth Wilderness. The Nichols Creek portion of the project area is part of the West Fork Municipal Watershed for the community of Red Lodge. Proposed treatment consists of a variety of thinning (including post and pole/teepee pole collection), clearcuts ranging from one half acre to 40 acres in size, hand cutting and mechanical treatment of small diameter vegetation, and broadcast and pile burning to meet the purpose and need. The action alternatives also include reconstruction of Nichols Creek Road to reduce sedimentation into Nichol Creek, road reconstruction and maintenance of existing roads, approximately 4 miles of road decommissioning, and 5 to 7.4 miles of temporary road construction depending upon alternative. A site specific Forest Plan amendment may be needed to address effects to Management Indicator Species (MIS) habitat.

DATES: The draft environmental impact statement is planned to be released in April 2014 and the final environmental impact statement and draft decision is planned for release in July 2014. The project was initially released for public scoping June 14, 2012 and February 22, 2013.

ADDRESSES: Comments are not being solicited at this time because of earlier scoping efforts. However, written comments may be sent to Amy Waring, Custer Gallatin National Forest, 1310 Main Street, Billings, MT 59105. Comments may also be sent via email to: *comments-northern-custer-beartooth@fs.fed.us,* or via facsimile to 406–255–1499.

FOR FURTHER INFORMATION CONTACT: Amy Waring, Team Leader, at (406) 255–1451.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Greater Red Lodge Project is proposed to respond to goals and objectives in the Forest Plan for the Custer Gallatin National Forest, national direction for ecological restoration and resilience (Forest Service Manual 2020.2), and the Northern Region Integrated Restoration and Protection Strategy. The purpose of proposed management actions includes:

1. Reduce Hazardous Fuels

- Reduce high-intensity wildfire within the Wildland Urban Interface (WUI) as identified in the Carbon County Community Wildfire Fire Protection Plan.
- Provide for a safer environment for the public and firefighters should a wildfire occur within the proposed treatment areas.
- To provide wildfire managers more suppression options to confine future wildfires from spreading beyond NFS lands.

The project area is located in wildland urban interface, and is capable of supporting high intensity wildfires which presents a risk to public and firefighter safety. In this transition zone, social considerations play a large part in how vegetation is managed. Wildfires will continue to be suppressed due to the proximity to private lands, homes, ranches, and other infrastructure, and risk to public safety. Fire hazard can be reduced through strategic treatments that consist of thinning to increase crown spacing or clearcutting conifer stands to spatially break up contiguous stands, reducing surface fuel loads by mechanical cleanup and/or prescribed fire, and maintaining grassland openings through mechanical treatment and broadcast burning.

2. Maintain/Improve Resiliency of Forest Vegetation and Grasslands

- Improve and/or maintain the general health, resiliency, and sustainability of forested stands and grasslands.
- Reduce the risk of epidemic insect and disease infestations within the project area.

Resiliency to disturbances may be improved by increasing the diversity of species (including aspen, limber pine and ponderosa pine), and increasing age class diversity (including regeneration of lodgepole pine, promoting large diameter Douglas fir stands, and variable densities of vegetation to reduce susceptibility to insect and disease infestations). Silvicultural treatments may slow or accelerate the pace of natural succession and reduce susceptibility and vulnerability from large disturbance events including wildfire and insect and disease epidemics. Increased landscape heterogeneity and pattern diversity may ameliorate the effects of large scale disturbances.

3. Enhance Aspen Habitat

- Provide for regeneration of aspen stands declining in health.
- Stimulate growth in aspen communities declining in health and/or abundance.
- Reduce conifer colonization in mixed aspen-conifer stands.

Aspen is relatively rare in the Beartooth Mountains compared to conifer trees, and many aspen

communities are either progressively converting to a dominance of lodgepole pine or Douglas fir, or are declining in health and/or abundance. Without disturbance, heavily conifer-colonized and aging aspen stands will eventually die and be lost from the landscape. Fire suppression will continue within the WUI, which will result in continued conifer colonization and additional declines in health and/or abundance of aspen stands. Treatments such as prescribed fire and mechanical treatment would increase the acreage of healthy aspen communities, leading to increased vegetation diversity, a potential rise in wildlife abundance, and reduced loss of aspen genetic diversity.

4. Improve Water Quality

• Reduce sediment delivery to Nichols Creek, thereby improving water quality and aquatic habitat in the West Fork Municipal Watershed.

• Decommission roads identified in the 2008 Beartooth Travel Management Decision as ''system roads, not needed.''

• Perform maintenance and reconstruction of existing system roads to reduce sources of sediment.

Nichols Creek Road has been poorly maintained and is contributing sediment to Nichols Creek, which is part of Red Lodge's municipal watershed. Reconstruction of Nichols Creek Road would reduce sediment delivery to Nichols Creek, provide for log haul and post and pole/teepee pole collection, accommodate future recreation needs, and management of the National Forest. Additional road decommissioning and maintenance/reconstruction of existing roads in the project area would further reduce sources of sediment and improve water quality.

Proposed Action

The proposed action includes the following components:

• Vegetative treatments on approximately 1990 acres of NFS lands within the project area, including approximately 1211 acres of commercial timber harvest (a combination of thinning, clearcuts, and post and pole/teepee pole collection) and 779 acres of mechanical/hand noncommercial treatment, including 565 acres of broadcast burning.

• Slash treated through a combination of the following: whole tree yarding, lop and scatter, masticating, and/or excavator piling. Fuel accumulations at landings are addressed through burning, chipping/masticating, and/or removal from NFS lands. Prescribed fire treatments include broadcast burning or pile burning.

• Treatment units accessed through an estimated 7.4 miles of temporary road construction and 9.3 miles of road easements across private (about 1.1 mile) and Montana Department of Natural Resources and Conservation (MTDNRC) lands (about 8.2 miles).

• Road decommissioning proposed on an estimated 3.5 miles of NFS roads. Road maintenance proposed on an estimated 6.3 miles of NFS roads. Road reconstruction proposed on an estimated 6 miles of NFS roads, including replacement of an aquatic barrier culvert with a bridge on the 2141 Red Lodge Creek Road. Best Management Practices (BMPs) implemented on haul routes to meet Timber Sale Requirements.

• Changing the road classification on an estimated 1.11 miles of existing roads currently classified as ''system road not needed'' to Maintenance Level 1 and .039 mile from ''system not needed'' to Maintenance Level 2 to provide for future management needs. These roads would be closed to public motorized use.

• Reconstruct about 1.25 miles of Nichols Creek Road to abate erosion problems (thereby improving water quality), accommodate log haul, post and pole/teepee pole collection, future recreation needs, and long-term National Forest management. The road prism would be approximately 12 feet wide and ditched and/or 14 feet wide and out sloped for drainage depending upon site conditions. Road gradient would be reduced to a maximum of 12 percent, and road drainage would be installed at a maximum of every 200 feet per Montanan State BMP Guidelines. The road would be opened to motorized use for about five years with timing restrictions for timber harvest and collection of post and poles and teepee poles. After timber management activities are completed, the route would be closed to public motorized use, and retained for non-motorized recreation. The road would remain designated as a Maintenance Level 2 Road by the Forest Service, which would accommodate any future management needs.

• Harvest activity within Riparian Areas will be conducted in compliance with Montana Streamside Management Zone (SMZ) regulations. The Forest Service will seek an Alternative Practices waiver on up to 33 acres for hand thinning, lop and scattering the slash, and broadcast burning within SMZs. Broadcast burning in the SMZ would be avoided (no active lighting unless necessary for control measures to cleanup fuel pockets). Fire would be allowed to creep into the SMZ and self-extinguish or be mopped up when convenient. Some temporary road locations may be needed to cross streams.

• All activities comply with the Grizzly Bear Conservation Strategy and Lynx Management Direction.

Possible Alternatives

In addition to No Action (Alternative 1) and the Proposed Action (Alternative 2), the Draft EIS will consider two additional action alternatives that were developed in response to public comments made during the scoping comment period. Both of these alternatives reduce the size and scope of proposed treatment compared to the proposed action. Compared to the proposed action, Alternative 3 reduces the amount of treatment by about 300 acres, and Alternative 4 reduces the amount of treatment by about 1000 acres.

Alternative 3 proposes treatment on 1706 acres (927 acres commercial, 779 acres noncommercial). It includes 4 acres of noncommercial treatment in Inventoried Roadless, which would be accessed by an existing road. Treatment would involve hand cutting small diameter lodgepole pine by chainsaws and lopping and scattering the slash to increase tree spacing, which will improve growth and vigor of the stand and reduce fire hazard. Compared to the proposed action, Alternative 3 adds more No Treatment ''skips'' in between treated areas to maintain wildlife habitat, and drops or modifies proposed treatment units based on perceived impacts to wildlife, water quality, and scenery.

Alternative 4 proposes treatment on 1054 acres (670 acres commercial, 384 acres noncommercial). Alternative 4 also responds to public comment to avoid log haul as much as possible on the NFSR 21415 road which is an important recreational route for some members of the public, and proposes alternative temporary road access instead.

Alternatives 3 and 4 both reconstruct about 1.25 miles of Nichols Creek Road to reduce sedimentation into Nichols Creek (a municipal watershed), but the road would not be reconstructed to accommodate log haul or post and pole/teepee pole collection. Vegetation treatments along Nichols Creek are dropped under Alternatives 3 and 4.

Under all action alternatives, commercial harvest would be accomplished via tractor logging and whole tree yarding during the summer under dry soil conditions, or in the

winter on frozen ground or over snow. Noncommercial treatment would be done by hand (chainsaws) or mechanically, and may include pile or broadcast burning. All action alternatives require various levels of temporary road construction (about 7.4, 6.7, and 5 miles for Alternatives 2, 3, and 4 respectively), and about 6 miles of road maintenance, 6 miles road reconstruction, and 4 miles of road decommissioning. No road construction or maintenance would occur in Inventoried Roadless.

Forest Plan Amendment

The Custer Forest Plan standard for Management Indicator Species (MIS) is to maintain and improve the habitat. The northern goshawk is MIS for old growth forest. Two occupied goshawk nest sites are present in the project area, located on Forest Service lands in close proximity to lands managed by the State of Montana Department of Natural Resources and Conservation (MT DNRC). NEPA requires analysis of past, present, and reasonably foreseeable future actions that could contribute to cumulative effects. That state of Montana recently approved a decision to harvest state lands adjacent to the Greater Red Lodge Project Area, which will include clearcutting nest and post fledgling area (PFA) habitat. The Greater Red Lodge Project proposes a relatively small amount of treatment in PFA habitat, but does not propose treatment in the nest stands. The cumulative effects to these two goshawk territories may include short term effects that may not fully be consistent with the Forest Plan standard to ''maintain and improve'' habitat. Therefore a site specific Forest Plan Amendment is being considered to acknowledge that there may be effects to old growth species under all action alternatives.

No Action Alternative

The No Action alternative represents the existing condition in the Greater Red Lodge Project Area. Under this alternative, none of the activities proposed for the Greater Red Lodge Project would occur. Ongoing activities, such as recreation, public firewood gathering, fire suppression, and normal road maintenance would continue.

No treatment does not mean that the forest will stay the same as it is now. Forests are dynamic ever-changing biological systems that experience and respond to catastrophic events such as fire, wind storms, and insects and disease, and continually grow, develop, mature, die, and start anew. As forest succession proceeds, aspen stands, open meadows, and riparian areas will continue to be colonized by conifers. In the absence of wildfire or vegetation treatments, the diversity of forest vegetation and stand structure in the project area will likely become more homogenous, with increases in understory ladder fuels. As existing stands age or deteriorate as part of natural succession, increased susceptibility to insect attacks, disease, windthrow, or competition mortality will occur. Stands will continue to experience increasing surface fuel loads and, when combined with already tight crown spacing, will be more capable of supporting high intensity wildfires. Under the no action alternative, no treatment would occur in the wildland urban interface. Predicted fire behavior under typical large fire development conditions could preclude wildfire suppression operations during initial attack. Ingress and egress for firefighting and emergency equipment and personnel, as well as residents and visitors become difficult under this scenario. Furthermore, high intensity fire behavior due to existing vegetation conditions in the wildland urban interface could limit suppression options, increasing the threat to nearby values at risk both on and off national forest lands.

Responsible Official

The Responsible Official is Mary C. Erickson, Forest Supervisor, Custer Gallatin National Forest, 1310 Main Street, Billings, MT 59105.

Nature of Decision To Be Made

Based on the purpose and need for the proposed action, the Responsible Official will determine whether to proceed with the action as proposed, as modified by another alternative or not at all. If an action alternative is selected, the Responsible Official will determine what design features, mitigation measures and monitoring to require.

Preliminary Issues

The Interdisciplinary Team reviewed scoping comments and identified significant issues that led to the development of alternatives to the proposed action, and analysis issues. Significant issues included (1) concerns about the size and scale of the project and the cumulative effect of the Greater Red Lodge Project and the MT DNRC Palisades Timber Sale, (2) concerns about impacts to wildlife habitat for mature forest species, (3) concerns about impacts to scenery, (4) concerns about impacts to recreation and transportation, and (5) a myriad of issues related to reconstruction of Nichols Creek Road, including water quality, economics, and cultural resources.

Additionally, the EIS will consider a number of analysis issues to evaluate how the purpose and need for action will be met (including changes to wildfire and beetle hazards), and impacts to specific resources including, but not limited to Threatened/Endangered Species, big game, water quality, soil productivity, aquatic species, range, noxious weeds, and sensitive plants.

Permits or Licenses Required

The following permits may be required prior to project implementation in order to ensure Federal and State laws are met: (1) Montana Streamside Protection Act (SPA 124 Permit); (2) Federal Clean Water Act (Section 404 Permit); (3) Short-Term Water Quality Standard for Turbidity (318 Authorization); and (4) Alternative Practices Waiver from MT DNRC to remove trees in a streamside management zone to maintain wet meadows.

Scoping Process

The Beartooth District provided information to the public and asked for comments in 2012 and 2013, and provided numerous opportunities for public input as the proposed action and alternatives were developed. On June 14, 2012, the District scoped a preliminary purpose/need and general proposed action (i.e. unit boundaries identified, but treatments not assigned), and conducted a public field trip and meeting on June 28, 2012. As a result, the purpose and need was refined and clarified, and comments were considered as the proposed action was developed.

On February 22, 2013, the District scoped a detailed purpose and need and proposed action, and received about 36 comments. A public meeting was held on March 14, 2013, and field trips were held on June 6 and 28, 2013. The Forest Service also participated in numerous other meetings to discuss the project. As alternatives to the proposed action were developed, the District held additional field trips and reviewed draft alternatives with the public to provide information, discuss issues of concern, provide an opportunity for the public to interact with resource specialists, and provide an additional opportunity for people to provide comments on the alternatives before they were finalized. Throughout this process, the district also met with local government and interest groups to share information.

Comments Requested

Given that scoping and public meetings have been conducted, comments are not being requested at this time. The Draft EIS will be published in April 2014 and include a 45-day comment period.

Dated: February 4, 2014.

Mary C. Erickson,

Forest Supervisor.

[FR Doc. 2014–02918 Filed 2–10–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley National Forest Resource Advisory Committee (RAC) will meet in Vernal, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to receive updates from approved and finished projects and plan meeting schedule for recommending new projects for funding in 2014.

DATES: The meeting will be held March 5th 2014.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office located at 355 North Vernal Avenue, Vernal, Utah 84078.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Ashley National Forest Supervisor's Office located at 355 North Vernal Avenue, Vernal, Utah 84078. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Louis Haynes by phone at 435–781–5105 or via email at *ljhaynes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by February 26, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Louis Haynes, Public Affairs Officer, 355 North Vernal Avenue, Vernal, Utah, 84078; or by email to *ljhaynes@fs.fed.us*, or via facsimile to 435–781–5142.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 4, 2014.

Scott Bingham,

Acting Forest Supervisor.

[FR Doc. 2014–02773 Filed 2–10–14; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fishlake Resource Advisory Committee (RAC) will meet in Richfield, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is discuss reauthorization of the Act, review roles and responsibilties, review current members' status and extension of membership, the recruitment of new members, and elect a chairperson.

DATES: The meeting will be held March 13, 2014 at 6 p.m. (MDT).

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Fishlake National Forest Supervisor's Office, 115 E 900 N, Richfield, Utah.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Fishlake National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Zapell, Designated Federal Officer, by phone at 435–896–1070 or via email at *jzapell@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/AA113CC501D12647882575BD006DF2AA?OpenDocument.* The agenda will include time for people to make oral

statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by February 27, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to John Zapell, Designated Federal Officer, 115 E. 900 N., Richfield, Utah 84701; or by email to *jzapell@fs.fed.us,* or via facsimile to 435–896–9347.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: January 5, 2014.

Steve T. Rodriguez,

Acting Forest Supervisor.

[FR Doc. 2014–02914 Filed 2–10–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

Public Availability of FY 2013 Service Contract Inventories

AGENCY: Office of Procurement and Property Management, Departmental Management, Department of Agriculture.

ACTION: Notice of public availability of FY 2013 Service Contract inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Department of Agriculture is publishing this notice to advise the public of the availability of the FY 2013 Service Contract inventory. This inventory provides information on FY 2013 service contract actions over $25,000. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The Department of Agriculture has posted its inventory and a summary of the inventory on the Office of Procurement and Property Management homepage at the following link: *http://www.dm.usda.gov/procurement/.*

FOR FURTHER INFORMATION CONTACT: Dorothy Lilly, Office of Procurement and Property Management, at (202) 690–2064, or by mail at OPPM, MAIL STOP 9304, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9303. Please cite ''2013 Service Contract Inventory'' in all correspondence.

Signed in Washington, DC, on January 27, 2014.

Lisa M. Wilusz,

Director, Office of Procurement and Property Management.

[FR Doc. 2014–02449 Filed 2–10–14; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Estimates of the Voting Age Population for 2013

AGENCY: Office of the Secretary, Commerce.

ACTION: General notice announcing population estimates.

SUMMARY: This notice announces the voting age population estimates as of July 1, 2013, for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

FOR FURTHER INFORMATION CONTACT: Victoria A. Velkoff, Chief, Population Division, U.S. Census Bureau, Room HQ–5H174, Washington, DC 20233, at 301–763–2071.

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 2013, for each State and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2013

Area	Population 18 and over
United States	242,542,967
Alabama	3,722,241
Alaska	547,000
Arizona	5,009,810
Arkansas	2,249,507
California	29,157,644
Colorado	4,030,435
Connecticut	2,810,514
Delaware	722,191
District of Columbia	534,975
Florida	15,526,186
Georgia	7,502,458
Hawaii	1,096,788
Idaho	1,184,355
Illinois	9,858,828
Indiana	4,984,875
Iowa	2,366,384
Kansas	2,169,865
Kentucky	3,381,291
Louisiana	3,512,513
Maine	1,067,026
Maryland	4,584,292
Massachusetts	5,298,878
Michigan	7,650,421
Minnesota	4,141,269
Mississippi	2,253,775
Missouri	4,646,486
Montana	791,184
Nebraska	1,404,168
Nevada	2,128,531
New Hampshire	1,052,337
New Jersey	6,877,222
New Mexico	1,577,747
New York	15,411,151
North Carolina	7,562,455
North Dakota	560,705
Ohio	8,920,978
Oklahoma	2,903,541
Oregon	3,072,459
Pennsylvania	10,058,156
Rhode Island	837,524
South Carolina	3,695,041
South Dakota	636,918
Tennessee	5,004,401
Texas	19,406,207
Utah	2,004,283
Vermont	503,929
Virginia	6,395,870
Washington	5,375,611
West Virginia	1,472,626
Wisconsin	4,434,937
Wyoming	444,979

Source: U.S. Census Bureau, Population Division.

I have certified these counts to the Federal Election Commission.

Dated: January 28, 2014.

Penny Pritzker,

Secretary, U.S. Department of Commerce.

[FR Doc. 2014–02854 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–8–2014]

Foreign-Trade Zone (FTZ) 265—Conroe, TX; Proposed Revision to Production Authority, Bauer Manufacturing Inc., (Pile Drivers, Boring Machinery, and Foundation Construction Equipment), Conroe, TX

The City of Conroe, Texas, grantee of FTZ 265, submitted a notification that proposes a revision to existing production authority approved on behalf of Bauer Manufacturing Inc. (Bauer), located in Conroe, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 9, 2014.

Bauer has authority to produce pile drivers and leads, boring machinery, foundation construction equipment, foundation casings, related parts and sub-assemblies, and tools and accessories for pile drivers and boring machinery within Site 1 of FTZ 265 (see, 78 FR 52759, 8–26–2013). Under the existing authority, Bauer voluntarily admits all foreign-origin steel products subject to antidumping and countervailing duty orders to FTZ 265 in domestic (duty-paid) status (19 CFR 146.43(a)(2)). The specific foreign-origin steel products in question are cold drawn/rolled steel pipes and tubes, threaded pipes, and seamless tubes. In the current request, Bauer seeks to admit all foreign-origin steel products subject to antidumping and countervailing duty orders to the zone in privileged foreign status (19 CFR 146.41) under the standard restriction established in Section 400.14(e)(2) of the FTZ Board's regulations.

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 March 24, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: January 27, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–02952 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper From Germany: Partial Rescission of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective February 11, 2014.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Terre Keaton Stefanova, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2013, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on lightweight thermal paper from Germany for the period of review (POR) of November 1, 2012, through October 31, 2013.[1]

On December 2, 2013, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from Appvion Inc. (the petitioner), a domestic interested party, to conduct an administrative review of the sales of Papierfabrik August Koehler SE (Koehler) (formerly known as Papierfabrik August Koehler AG),[2] Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corp. Also on this date Mitsubishi HiTec Paper Europe GmbH (Mitsubishi Europe) timely requested a review of itself.

On December 30, 2013, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on lightweight thermal paper from Germany with respect to the above-named companies.[3]

On January 16, 2014, the petitioner timely withdrew its request for a review of Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corp. Also on this date, Mitsubishi Europe withdrew its request for a review.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. We received the petitioner's and Mitsubishi Europe's withdrawal requests before the 90-day deadline. Therefore, in response to their withdrawal requests and pursuant to 19 CFR 351.213(d)(1), we are rescinding this review with regard to Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH, Mitsubishi International Corp, and Mitsubishi Europe. The instant review will continue with respect to Koehler.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 78 FR 65612 (November 1, 2013).

[2] We note that on November 27, 2013, Koehler requested a review of itself. In addition, we note that in the preliminary results of the 2011–2012 administrative review, we determined that Papierfabrik August Koehler SE is the successor-in-interest to Papierfabrik August Koehler AG (*see Lightweight Thermal Paper from Germany: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 78335 (December 26, 2013)).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 79392 (December 30, 2013).

review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 5, 2014.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–02948 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD077

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas; Spring Species Working Group Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Advisory Committee (Committee) to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting on March 4–5, 2014. The Committee will meet with its Technical Advisors to discuss matters relating to ICCAT, including the 2013 Commission meeting results; research and management activities; global and domestic initiatives related to ICCAT; the Atlantic Tunas Convention Act-required report on any identification of countries that are diminishing the effectiveness of ICCAT; the results of meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species.

DATES: The open sessions of the Committee meeting will be held on March 4, 2014, 9 a.m. to 2:30 p.m.; and March 5, 2014, 9 a.m. to 1:15 p.m. Closed sessions will be held on March 4, 2014, 3 p.m. to 5:30 p.m., and on March 5, 2014, 8 a.m. to 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Hotel, 1750 Rockville Pike, Rockville, MD 20852. The phone number is (301) 468–1100.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley at (301) 427–8373.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on the 2013 ICCAT meeting results and U.S. implementation of ICCAT decisions; NMFS research and monitoring activities; global and domestic initiatives related to ICCAT; the Atlantic Tunas Convention Act-required consultation on any identification of countries that are diminishing the effectiveness of ICCAT; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment. A copy of the agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will meet in its Species Working Groups for part of the afternoon of March 4, 2014, and for one hour on the morning of March 5, 2014. These sessions are not open to the public, but the results of the species working group discussions will be reported to the full Advisory Committee during the Committee's open session on March 5, 2014.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel O'Malley at (301) 427–8373 at least 5 days prior to the meeting date.

Dated: February 5, 2014.

Jean-Pierre Plé,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2014–02919 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD106

Fisheries of the Gulf of Mexico and South Atlantic; (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 38 pre-assessment workshop data webinar for Gulf of Mexico and South Atlantic King Mackerel.

SUMMARY: The Southeast Data, Assessment, and Review (SEDAR) assessment of the Gulf of Mexico and South Atlantic King Mackerel will consist of several workshops and a series of webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 38 pre-assessment workshop webinar will be held on Tuesday, March 4, 2014, from 10 a.m. until 12 p.m. eastern standard time (EST).

ADDRESSES:

Meeting Address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of the webinar.

SEDAR Address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; telephone: (843) 571–4366; email: *julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Workshop and a series of Assessment webinars; and (3) Review Workshop. The product of the Data Workshop is a report which compiles and evaluates potential datasets and recommends which

datasets are appropriate for assessment analyses. The Assessment Workshop and webinars produce a report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the data webinar are as follows:

Participants will discuss and review data analyses and decisions of the Data Workshop panel.

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.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR 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: February 5, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–02849 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Advisory Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Sea Grant Advisory Board (Board). Board members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described in the agenda found on the National Sea Grant College Program Web site at *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard.aspx*

DATES: The announced meeting is scheduled 10:00 a.m.–4:00 p.m. EST Thursday, February 27, 2014 and 1:00 p.m.–4:00 p.m. EST Friday, February 28, 2014.

ADDRESSES: The meeting will be held via webinar. Public access is available by webinar registration or at 1315 East-West Highway, Building 3, Room 11817, Silver Spring, MD 20910. Please register by contacting Jennifer Maggio at *Jennifer.Maggio@noaa.gov* or 301–734–1088. Webinar and seating capacity may be limited and will be available on a first-come, first-served basis.

Status: The meeting will be open to public participation with a 15-minute public comment period on Thursday, February 27 at 3:30 p.m. EST (check agenda on Web site to confirm time.) The Board expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Officer by February 21, 2014 to provide sufficient time for Board review. Written comments received after February 21, 2014 will be distributed to the Board, but may not be reviewed prior to the meeting date.

Special Accomodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Elizabeth Ban, Designated Federal Officer at 301–734–1082 by February 19, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ban, Designated Federal Officer, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11843, Silver Spring, Maryland 20910, (301) 734–1082.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Any updates to the agenda for this meeting will be available at: *http://seagrant.noaa.gov/WhoWeAre/Leadership/NationalSeaGrantAdvisoryBoard.aspx*

Dated: January 31, 2014.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–02903 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD113

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a Pacific Sardine Stock Assessment Review (STAR) Panel meeting and a data availability meeting.

DATES: The STAR Panel meeting will be held Monday, March 3 through Wednesday, March 5, 2014. That meeting will begin the first day at 8:30 a.m. and at 8 a.m., each subsequent day. The meeting will conclude each day at 5 p.m. or when business for the day has been completed. The data availability meeting will begin at 8 a.m. and

conclude at 2 p.m. on Thursday, March 6, 2014.

ADDRESSES: The meetings will be held in the Pacific Conference Room of the NOAA Southwest Fisheries Science Center, 8901 La Jolla Shores Dr., La Jolla, CA 92037–1508.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review a full stock assessment for Pacific sardine. The last full stock assessment was in 2011, with updates completed in 2012 and 2013. The review panel will consist of two members of the Pacific Council's Scientific and Statistical Committee's Subcommittee on Coastal Pelagic Species (CPS), plus two independent experts. The Pacific Council will use the 2014 assessment to establish Pacific sardine fishery management measures and harvest specifications for the 2014–15 fishing year, beginning July 1, 2014 and ending June 30, 2015. Representatives of the Pacific Council's CPS Management Team and the CPS Advisory Subpanel will also attend the meeting.

The purpose of the data availability meeting is to identify likely sources of fisheries data and surveys that can potentially be used in future assessments for Pacific sardine, Pacific mackerel, northern anchovy, and jack mackerel.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the panel's intent to take final action to address the emergency.

Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Dale Sweetnam, (858) 546–7170, at least 5 days prior to the meeting date.

Dated: February 5, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–02850 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting (Webinar)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a joint webinar meeting of its Coastal Pelagic Species Management Team and Coastal Pelagic Species Advisory Subpanel.

DATES: The Webinar meeting will be held Tuesday February 25, 2014, 11 a.m. until 12:30 p.m., Pacific Time.

ADDRESSES: The meeting will be held via webinar, and the public is invited to attend remotely, in listen-only mode. Detailed instructions on how to access the webinar will be posted to the Council's Web site in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to discuss Pacific sardine temperature parameters, including the CPSMT's report and a revised analyses report, both of which will be included in the March Council meeting briefing book materials.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the panel's intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820–2280, at least 5 days prior to the meeting date.

Dated: February 5, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–02871 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA602

Marine Mammals; File No. 16109

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Versar (formerly GeoMarine, Inc.) (Responsible Party: Susanne Bates), Gustavus, Texas 99826, has applied for an amendment to Scientific Research Permit No. 16109–01.

DATES: Written, telefaxed, or email comments must be received on or before March 13, 2014.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16109 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No.

16109–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 16109, issued on May 3, 2012 (77 FR 27719) and amended on July 9, 2012 (77 FR 50086), authorizes takes of 35 species of cetaceans, four species of pinnipeds, and five species of sea turtles from New Jersey to North Carolina for scientific research. The research involves harassment by vessel approach during shipboard transect surveys. Eleven of the 44 species targeted for research are listed as threatened or endangered: blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), humpback whale (*Megaptera novaeangliae*), North Atlantic right whale (*Eubalaena glacialis*), sei whale (*B. borealis*), sperm whale (*Physeter macrocephalus*), green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), loggerhead sea turtle (*Caretta caretta*), Kemp's ridley sea turtle (*Lepidochelys kempii*), and leatherback sea turtle (*Dermochelys coriacea*). The permit expires May 15, 2017.

The permit holder is requesting the permit be amended to include changes to the terms and conditions of the permit related to numbers of animals taken and manner of taking to include: extending the action area north and south to include all U.S. waters from Maine to Florida; adding aerial surveys to their research methods; adding takes for Blainsville beaked whale (*Mesoplodon densirostris*), false killer whales (*Pseudorca crassidens*), hawksbill, loggerhead, Kemp's ridley, and green sea turtles; increasing the number of marine mammals and sea turtles that could be harassed; and changing the frequency of vessel based surveys from once per season to twice a month, year-round to generate abundance/density estimates for sea turtles and marine mammals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), an initial determination has been made that the activities proposed are consistent with the Proposed Action Alternative in the Environmental Assessment (EA) on the Effects of Issuing Two Scientific Research Permits, No. 16109 and No. 15575, for Protected Sea Turtles and Marine Mammals (NMFS 2012). Based on that analysis, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on May 1, 2012. The EA and FONSI are available upon request.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 6, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–02935 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD022

Takes of Marine Mammals Incidental to Specified Activities; Construction Activities of the Children's Pool Lifeguard Station at La Jolla, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the City of San Diego for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by Level B harassment, incidental to construction activities of the Children's Pool Lifeguard Station in La Jolla, CA. NMFS has reviewed the application, including all supporting documents, and determined that it is adequate and complete. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the City of San Diego to take, by Level B harassment only, three species of marine mammals during the specified activities.

DATES: Comments and information must be received no later than March 13, 2014.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Goldstein@noaa.gov.* Please include 0648–XD022 in the subject line. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the IHA application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice, including the IHA application, may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(D)), directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the

least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. 16 U.S.C. 1362(18).

Summary of Request

On November 26, 2013, NMFS received an application from the City of San Diego, Engineering and Capital Projects Department, requesting an IHA. The requested IHA would authorize the take, by Level B (behavioral) harassment, of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to construction activities of the Children's Pool Lifeguard Station at La Jolla, CA. Because the proposed construction activities were subject to delays and cannot be completed by December 15, 2013, the City of San Diego has requested a renewal of the 2013 to 2014 IHA for an additional year. The construction operations are planned to take place during June 2014 to June 2015 in La Jolla, CA. Regarding the previous IHA, NMFS published a notice in the **Federal Register** (78 FR 25958) on May 3, 2013, making preliminary determinations and proposing to issue an IHA. The notice initiated a 30-day public comment period. On July 8, 2013, NMFS published a notice in the **Federal Register** (78 FR 40705) announcing the issuance of an IHA. Additional information on the construction activities at the Children's Pool Lifeguard Station is contained in the IHA application, which is available upon request (see **ADDRESSES**).

Description of the Proposed Specified Activity

The Children's Pool was created in 1931 by building a breakwater wall which created a protected pool for swimming. This pool has partially filled with sand, but still has open water for swimming, as well as a beach for sunbathing and beachcombing. The Children's Pool and nearby shore areas (i.e., shoreline, beaches, and reefs of La Jolla) are used by swimmers, sunbathers, SCUBA divers and snorkelers, shore/surf fishermen, school classes, tide pool explorers, kayakers, surfers, boogie and skim boarders, seal, sea lion, bird and nature watchers as well as other activities by the general public. Over the last three years (2010 through 2012), an average of 1,556,184 people have visited the Children's Pool and lifeguards have taken an average of 8,147 preventive actions and 86 water rescues annually (CASA, 2010; 2011; 2012). The previous lifeguard facility was built in 1967, it is old, deteriorating from saltwater intrusion, and no longer serves neither the needs of the lifeguard staff nor the beach-going public. The structure was condemned on February 22, 2008 due to its deteriorated conditions and the lack of structural integrity; therefore, it can no longer be used in its current state. Since the existing building is no longer viable, a temporary lifeguard tower was moved in, but because of basic year-round working condition needs for the lifeguards and the demand for lifeguard services, a new station is required. The overall project includes the demolition of the existing lifeguard station and construction of a new, three-story, lifeguard station on the same site. Demolition of the existing lifeguard station was completed during 2013 and construction of the new lifeguard station is expected to be completed during 2014. The new facility will have an observation tower, first aid room, male/female locker rooms, and a second observation/ready room area, an accessible ramp to the new unisex public restrooms on the lower floor, a public viewing area, and a plaza in front of the lifeguard station. The new lifeguard station facilities will provide a 270° view of beaches, bluffs, and reefs for continued service to the public onshore as well as in the water.

Sound levels during all phases of the project will not exceed 110 dB re 20 μPa at five feet from the sound sources. The 110 dB estimate is based on equipment manufacturers' estimates obtained by the construction contractor. The City of San Diego utilized the published or manufacturer's measurement data based on the planned equipment (i.e., a backhoe, dump truck, cement pump, air compressor, electric screw guns, jackhammers, concrete saw, chop saw, and hand tools) to be utilized on the proposed project site. Operation of the equipment is the primary activity within the range of construction of activities that is likely to affect marine mammals by potentially exposing them to in-air (i.e., airborne or sub-aerial) noise. Generally, harbor seals are considered skittish and have the tendency to react or flush into the water at low levels of sound and/or movements. While a range of behavioral responses can be expected, it is difficult to predict what activities might cause noticeable behavioral reactions with Pacific harbor seals at this site. During the demolition and construction activities in 2013, on occasion harbor seals did alert and/or flush due to equipment noises or visual cues while at other times there were no reactions to the same stimuli. Children's Pool is a highly disturbed haul-out site and rookery, and the harbor seals observed at this location are unusually tolerant to the presence of humans, and do not respond in the same manner when exposed to stimuli (e.g., laughing, clapping, stomping, climbing, snorkeling, swimming, wading, traffic, sirens, barking dogs, and road construction) when compared to the behavior of other harbor seals in other ''non-urbanized'' areas (Yochem and Stewart, 1998; Hanan, 2004; Hanan & Associates, 2011; Hanan, 2005) (see *http://www.youtube.comwatch?v=4IRUYVTULsg*). During the working day, the City of San Diego estimates there will be sound source levels above 90 dB re 20 μPa, including 65 days of 100 to 110 dB re 20 μPa at the demolition and construction site. The contractor used published or manufacturer's measurements to estimate sound levels. On average, pinnipeds will be about 30.5 meters (m) (100 feet [ft]) or more from the construction site with a potential minimum of about 15.2 m (50 ft). During 2013, measured sound levels from the demolition equipment reaching the

pinnipeds did not exceed approximately 90 dB at the haul-out area closest to the demolition and construction and a peak of about 83 dB re 20 μPa at the mean hauling-out distance (30.5 m). The City of San Diego used the formula and online calculator on the Web site: *http://sengpielaudio.com/calculator-distance.htm* and measured distances from the sound source to determine the area of potential impacts from in-air sound. No studies of ambient sound levels have been conducted at the Children's Pool, the City of San Diego intends to measure in-air background noise levels in the days immediately prior to, during, and after the demolition and construction activities.

The previous lifeguard station is located on a bluff above Children's Pool (32° 50′ 50.02″ North, 117° 16′42.8″ West) nearby reef and beach areas (see detailed maps and photographs on pages 30 to 31 of the ''Mitigated Negative Declaration'' in the IHA application). The building has deteriorated significantly and must be removed. For public service during demolition and construction of the new lifeguard station, two temporary towers were placed on nearby cliffs and the first temporary tower was removed. The building contractor utilized an excavator, backhoe, concrete saw, and jackhammers for demolishing the previous structure, and the waste materials were loaded into dump trucks to be hauled to an offsite. Material will be hauled to a local offsite landfill where it will be separated into recycled content and waste. In its place, a new lifeguard station is scheduled to be constructed within and adjacent to the previous facility. The new lifeguard facility is an optimal location to provide lifeguard service to the community. The new three-story, building will contain beach access level public restrooms and showers, lifeguard lockers, and sewage pump room; a second level containing two work stations, ready/observation room, kitchenette, restroom, and first aid station; and a third ''observation'' level will include a single occupancy observation space, radio storage closet, and exterior catwalk. Interior stairs will link the floors. The existing below grade retaining walls will remain in place and new retaining walls will be constructed for a ramp from street level to the lower level for emergency vehicle beach access and pedestrian access to the lower level restrooms and showers. A 5.6 m (18.5 ft) wall would be located along the north end of the lower level. The walls would be designed for a minimum design life of 50 years and would not be undermined from ongoing coastal erosion. The walls would not be readily viewed from Coast Boulevard, the public sidewalks or the surrounding community.

Lower level improvements include new beach access restrooms and showers, lifeguard lockers, and a sewage pump room. The plaza level plan includes two work stations, a ready/observation room, kitchenette, restroom and first aid station. The observation level includes a single occupancy observation space, radio storage closet, and exterior catwalk. The existing plaza would be reconfigured to provide a 3.1 m (10 ft) wide ramp for emergency vehicles to the beach and for pedestrians to the lower level accessible restrooms and showers. Enhanced paving, seating and viewing space, drinking fountains, adapted landscaping and water efficient irrigation is also included. No material is expected to enter or be washed into the marine environment that may affect water quality, as the City of San Diego has developed the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System and the Stormwater Pollution Prevention Plan, required for the demolition and construction activities.

Demolition and construction of the new lifeguard station was estimated to take approximately 7 months (148 actual demolition and construction days) and be completed by December 15, 2013; however, demolition and construction did not start until later than previously planned due to the presence of nesting migratory birds. There were additional unexpected delays in the demolition due to unforeseen underground structures at the site making it impossible to finish the project by December 15, 2013. Proposed construction activities will generally occur Monday through Friday (no work will occur on holidays) during daylight hours only, as stipulated in the ''Mitigated Negative Declaration'' and local ordinances. As a modification to the original IHA, the City of San Diego has requested that proposed construction activities be allowed on weekends (i.e., Saturday and Sunday) to ensure completion of the project during 2014. Demolition and construction activities are divided into phases:

(1) Mobilization and temporary facilities;

(2) Demolition and site clearing;

(3) Site preparation and utilities;

(4) Building foundation;

(5) Building shell;

(6) Building exterior;

(7) Building interior;

(8) Site improvements; and

(9) Final inspection and demobilization.

The City of San Diego completed phases 1 to 4 in December 2013. Construction of phases 5 to 9 will commence in June 2014, thereby necessitating a renewal of the previous IHA.

Detail summary (phases overlap in time):

See the notice of the final IHA for the City of San Diego's demolition and construction activities that was published in the **Federal Register** on July 8, 2013 (78 FR 40705) for a more detailed summary on phases 1 to 4 (i.e., mobilization and temporary facilities, demolition and site clearing, site preparation and utilities, and building foundation).

(5) *Building shell:*

Pre-cast concrete panel walls, panel walls, rough carpentry and roof framing, wall board, cable railing, metal flashing, and roofing.

Equipment—crane, truck, fork lift, and hand/power tools.

Timeframe—Approximately 35 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(6) *Building exterior:*

Doors and windows, siding paint, light fixtures, and plumbing fixtures.

Equipment—truck, hand/power tools, and chop saw.

Timeframe—Approximately 4 weeks.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(7) *Building interiors:*

Walls, sewage lift station, rough and finish mechanical electrical plumbing structural (MEPS), wall board, door frames, doors and paint.

Equipment—truck, hand/power tools, and chop saw.

Timeframe—Approximately 37 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(8) *Site improvements:*

Modify storm drain, concrete seat walls, curbs, and planters, fine grade, irrigation, hardscape, landscape, hand rails, plaques, and benches.

Equipment—backhoe, truck, hand/power tools, concrete pump/truck, and fork lift.

Timeframe—Approximately 37 days.

This phase will be completed in 2014 and has a maximum source level of 110 dB.

(9) *Final inspection, demobilization:*

System testing, remove construction equipment, inspection, and corrections.

Equipment—truck, and hand/power tools.

Timeframe—Approximately 41 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

The exact dates of the proposed activities depend on logistics and scheduling.

Additional details regarding the proposed construction activities of the Children's Pool Lifeguard Station can be found in the City of San Diego's IHA application. The IHA application can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Proposed Dates, Duration, and Specific Geographic Region

The La Jolla Children's Pool Lifeguard Station is located at 827½ Coast Boulevard, La Jolla, CA 92037 (32°50′ 50.02″ North, 117°16′42.8″ West. Because the City of San Diego and NMFS are already requiring a moratorium on all proposed construction activities during harbor seal pupping and weaning (i.e., December 15th to May 30th; see page 5 of the Negative Declaration in the IHA application), work on this project can only be performed between June 1st and December 14th of any year. The City of San Diego is planning to begin/resume the proposed project at the Children's Pool in La Jolla, CA on June 1, 2014, (see page 30 to 31 of the Negative Declaration in the IHA application) with completion of the new lifeguard station to be completed by December 15, 2014. The IHA may extend through June of 2015 to finish the proposed construction activities, if needed. The locations and distances (in ft) from the demolition/construction site to the Children's Pool haul-out area, breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area can be found in the City of San Diego's IHA application.

Description of Marine Mammals in the Specified Geographic Area of the Proposed Specified Activity

Three species of pinnipeds are known to or could occur in the Children's Pool proposed action area and off the Pacific coastline (see Table 1 below). Pacific harbor seals, California sea lions, and northern elephant seals are the three species of marine mammals that occur and are likely to be found within the immediate vicinity of the activity area; thus, they are likely to be exposed to effects of the proposed specified activities. NMFS and the City of San Diego do not expect incidental take of other marine mammal species from the proposed specified activities. A variety of other marine mammals have on occasion been reported from the coastal waters of southern California. These include gray whales, killer whales, bottlenose dolphins, Steller sea lions, northern fur seals, and Guadalupe fur seals. However, none of these species have been reported to occur in the proposed action area. Table 1 below identifies the cetacean and pinnipeds species, their habitat, and conservation status in the nearshore area of the general region of the proposed project area.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE GENERAL REGION OF THE PROPOSED ACTION AREA IN THE PACIFIC OCEAN OFF THE SOUTHERN COAST OF CALIFORNIA

Species	Habitat	Best population estimate (Minimum)[1]	ESA[2]	MMPA[3]	Population trend
Mysticetes					
Gray whale (*Eschrichtius robustus*).	Coastal and shelf	19,126 (18,107)	DL—Eastern Pacific stock. EN—Western Pacific stock.	NC—Eastern North Pacific stock. D—Western North Pacific stock.	Increasing over past several decades.
Odontocetes					
Killer whale (*Orcinus orca*)	Widely distributed	354 (354)—West Coast Transient stock.	NL EN—Southern resident population.	NC D—Southern Resident and AT1 Transient populations.	Increasing—West Coast Transient stock.
Bottlenose dolphin (*Tursiops truncatus*).	Offshore, inshore, coastal, estuaries.	323 (290)—California Coastal stock.	NL	NC	Stable.
Long-beaked common dolphin (*Delphinus capensis*).	Inshore	107,016 (76,224)—California stock.	NL	NC	Increasing.
Pinnipeds					
Pacific harbor seal (*Phoca vitulina richardii*).	Coastal	30,196 (26,667)—California stock.	NL	NC	Increased in California 1981 to 2004.
Northern elephant seal (*Mirounga angustirostris*).	Coastal, pelagic when not migrating.	124,000 (74,913)—California breeding stock.	NL	NC	Increasing through 2005, now stable.
California sea lion (*Zalophus californianus*).	Coastal, shelf	296,750 (153,337)—U.S. stock.	NL	NC	Increasing.
Steller sea lion (*Eumetopias jubatus*).	Coastal, shelf	72,223 (52,847)—Eastern U.S. stock.	DL—Eastern U.S. stock. EN—Western U.S. stock.	D	Overall increasing, decreasing in California.
Northern fur seal (*Callorhinus ursinus*).	Pelagic, offshore	12,844 (6,722)—California stock.	NL	NC—California stock	Increasing.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE GENERAL REGION OF THE PROPOSED ACTION AREA IN THE PACIFIC OCEAN OFF THE SOUTHERN COAST OF CALIFORNIA—Continued

Species	Habitat	Best population estimate (Minimum)[1]	ESA[2]	MMPA[3]	Population trend
Guadalupe fur seal (*Arctocephalus townsendi*).	Coastal, shelf	7,408 (3,028)—Mexico to California.	T	D	Increasing.

NA = Not available or not assessed.
[1] NMFS Marine Mammal Stock Assessment Reports
[2] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.
[3] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.

The rocks and beaches at or near the Children's Pool in La Jolla, CA, are almost exclusively Pacific harbor seal hauling-out sites. On infrequent occasions, one or two California sea lions or a single juvenile northern elephant seal, have been observed on the sand or rocks at or near the Children's Pool (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area). These sites are not usual haul-out locations for California sea lions and/or northern elephant seals. The City of San Diego commissioned two studies of harbor seal abundance trends at the Children's Pool. Both studies reported that appearances of California sea lions and northern elephant seals are infrequent, but not rare at Children's Pool (Yochem and Stewart, 1998; Hanan, 2004; Hanan & Associates, 2011). During 2013, the City of San Diego observed one juvenile California sea lion and no northern elephant seals at the Children's Pool.

Pacific Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. Two subspecies exist in the Pacific Ocean: *P. v. stejnegeri* in the western North Pacific near Japan, and *P. v. richardii* in the eastern North Pacific. The subspecies in the eastern North Pacific Ocean inhabits near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. These seals do not make extensive pelagic migrations, but do travel 300 to 500 kilometers (km) (162 to 270 nautical miles [nmi]) on occasion to find food or suitable breeding areas (Herder, 1986; Harvey and Goley, 2011). Previous assessments of the status of harbor seals have recognized three stocks along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington. An unknown number of harbor seals also occur along the west coast of Baja California, at least as far south as Isla Asuncion, which is about 100 miles south of Punta Eugenia. Animals along Baja California are not considered to be a part of the California stock because it is not known if there is any demographically significant movement of harbor seals between California and Mexico and there is no international agreement for joint management of harbor seals. Harbor seal presence at haul-out sites is seasonal with peaks in abundance during their pupping and molting periods. Pupping and molting periods are first observed to the south and progress northward up the coast with time (e.g., January to May near San Diego, April to June in Oregon and Washington) (Jeffries, 1984; Jeffries, 1985; Huber et al., 2001; Hanan, 2004; Hanan & Associates, 2011). In California, approximately 400 to 600 harbor seal haul-out sites are distributed along the mainland coast and on offshore islands, including intertidal sandbars and ledges, rocky shores and islets, and beaches (Harvey *et al.,* 1995; Hanan, 1996; Lowry *et al.,* 2008). Of these haul-out sites, only 14 locations are rookeries (2 locations have multiple sites, for a total of 17 sites) on or near the mainland of California. Preferred haul-out sites are those that are protected from the wind and waves, and allow access to deep water for foraging (Perrin *et al.,* 2008). Harbor seals are one of the most common and frequently observed marine mammals along the coastal environment.

The population of harbor seals has grown off the U.S. west coast and has led to new haul-out sites being used in California (Hanan, 1996). Pacific harbor seals haul-out year-round on nearby beaches and rocks (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area) below the lifeguard tower at Children's Pool. According to Yochem (2005), the Children's Pool beach site is used by harbor seals at all hours of the day and at all tides with the exception of occasional high tide/high swell events in which the entire beach is awash. Harbor seals have been observed hauling-out and documented giving birth at the Children's Pool since the 1990's (Yochem and Stewart, 1998; Hanan & Associates, 2004). It is the only rookery in San Diego County and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, CA (321.9 km [200 miles]). Also, it is one of the three known haul-out sites for this species in San Diego County. They haul-out, give birth to pups, nurse, and molt their pelage on the beach and often forage for food and mate in nearby areas. Harbor seal numbers have increased since 1979 and seals are documented to give birth on these beaches during December through May (Hanan, 2004; Hanan & Associates, 2011). The official start to pupping season is December 15th. Females in an advanced stage of pregnancy begin to show up on the Children's Pool beach by late October to early November. Several studies have identified harbor seal behavior and estimated harbor seal numbers including patterns of daily and seasonal area use (Yochem and Stewart, 1998; Hanan & Associates, 2011; Linder, 2011). Males, females, and pups (in season) of all ages and stages of development are observed at the Children's Pool and adjacent areas.

In southern California, a considerable amount of information is known about the movements and ecology of harbor seals, but population structure in the region is not as well known (Stewart and Yochem, 1994, 2000; Keper *et al.,* 2005; Hanan & Associates, 2011). Linder (2011) suggests that this population moves along the California coast and the beach at Children's Pool is part of a ''regional network of interconnected'' haul-out and pupping sites. Harbor seals often haul-out in protected bays, inlets, and beaches (Reeves *et al.,* 1992). At and near the Children's Pool, harbor seals haul-out on the sand, rocks, and breakwater base in numbers of 0 to 15

harbor seals to a maximum of about 150 to 250 harbor seals depending on the time of day, season, and weather conditions (Hanan, 2004, Hanan & Associates, 2011; Linder, 2011). Because space is limited behind the breakwater at the Children's Pool, Linder (2011) predicted that it is unlikely that numbers would exceed 250 harbor seals. Based on monitoring from a camera, Western Alliance for Nature (WAN) reports that during the month of May 2013, at any given time, up to 302 harbor seals were documented resting on the Children's Pool beach with additional harbor seals on the rocks and in the water (Wan, personal communication). Almost every day, except for weekends, the number of harbor seals on the beach was over 250 individuals. During the months of September 2012 to January 2013, the average number of harbor seals on the beach during hours prior to people on the beach or with people behind the rope varied from 83 to 120 animals. During this same period when there were people on the beach with or without the rope, but where people were across the rope, the average varied between 7 to 27, which is significantly less. The weather (i.e., wind and/or rain) as well as the proximity of humans to the beach likely affect the presence of harbor seals on the beach. These animals have been observed in this area moving to/from the Children's Pool, exchanging with the rocky reef directly west of and adjacent to the breakwater and with Seal Rock, which is about 150 m (492 ft) west of the Children's Pool. Harbor seals have also been reported on the sandy beach just southwest of the Children's Pool. At low tide, additional space for hauling-out is available on the rocky reef areas outside the retaining wall and on beaches immediately southward. Haul-out times vary by time of year, from less than an hour to many hours. There have been no foraging studies at this site, but harbor seals have been observed in nearshore waters and kelp beds nearby, including La Jolla Cove.

Radio-tagging and photographic studies have revealed that only a portion of seals utilizing a hauling-out site are present at any specific moment or day (Hanan, 1996, 2005; Gilbert *et al.,* 2005; Harvey and Goley, 2011; and Linder, 2011). These radio-tagging studies indicate that harbor seals in Santa Barbara County haul-out about 70 to 90% of the days annually (Hanan, 1996), the City of San Diego expects harbor seals to behave similarly at the Children's Pool. Tagged and branded harbor seals from other haul-out sites have been observed by Dr. Hanan at the Children's Pool. Harbor seals have been observed with red-stained heads and coats, which are typical of some harbor seals in San Francisco Bay, indicating that seals tagged at other locations and haul-out sites do visit the Children's Pool. A few seals have been tagged at the Children's Pool and there are no reports of these tagged animals at other sites (probably because of very low re-sighting efforts and a small sample size [10 individuals radio-tagged]), which may indicate a degree of site-fidelity (Yochem and Stewart, 1998). These studies further indicate that seals are constantly moving along the coast including to/from the offshore islands and that there may be as many as 600 individual harbor seals using Children's Pool during a year, but certainly not all at one time.

The City of San Diego has fitted a polynomial curve to the number of expected harbor seals hauling-out at the Children's Pool by month (see Figure 1 of the IHA application and Figure 2 below) based on counts at the Children's Pool by Hanan (2004) and Hanan & Associates (2011), Yochem and Stewart (1998), and the Children's Pool docents (Hanan, 2004). A three percent annual growth rate of the population was applied to Yochem and Stewart (1998) counts to normalize them to Hanan & Associates and docent counts in 2003 to 2004.

A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocial, with pups entering the water almost immediately after birth. Population size is estimated by counting the number of seals ashore during the peak haul-out period (May to July) and by multiplying this count by a correction factor equal to the inverse of the estimated fraction of seals on land. Based on the most recent harbor seal counts (2009) and including a revised correction factor, the estimated population of harbor seals in California is 30,196 individuals (NMFS, 2011), with an estimated minimum population of 26,667 for the California stock of harbor seals. Counts of harbor seals in California increased from 1981 to 2004. The harbor seal is not listed under the ESA and the California stock is not considered depleted or strategic under the MMPA (Carretta *et al.,* 2010).

California Sea Lion

The California sea lion is now considered to be a full species, separated from the Galapagos sea lion (*Zalophus wollebaeki*) and the extinct Japanese sea lion (*Zalophus japonicus*) (Brunner, 2003; Wolf *et al.,* 2007; Schramm *et al.,* 2009). They are found from southern Mexico to southwestern Canada. The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California. Genetic analysis of California sea lions identified five genetically distinct geographic populations: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California, and (5) Northern Gulf of California (Schramm *et al.,* 2009). In that study, the Pacific Temperate population included rookeries within U.S. waters and the Coronados Islands just south of U.S./Mexico border. Animals from the Pacific Temperate population range north into Canadian waters, and movement of animals between U.S. waters and Baja California waters has been documented, though the distance between the major U.S. and Baja California rookeries is at least 740.8 km (400 nmi). Males from western Baja California rookeries may spend most of the year in the U.S.

The entire population cannot be counted because all age and sex classes are never ashore at the same time. In lieu of counting all sea lions, pups are counted during the breeding season (because this is the only age class that is ashore in its entirety), and the numbers of births is estimated from the pup count. The size of the population is then estimated from the number of births and the proportion of pups in the population. Censuses are conducted in July after all pups have been born. There are no rookeries at or near the Children's Pool. Population estimates for the U.S. stock of California sea lions, range from a minimum of 153,337 to an average estimate of 296,750 animals. They are considered to be at carrying capacity of the environment. The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted or strategic under the MMPA.

Northern Elephant Seal

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45° North (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults return to land between March and August to molt, with males returning later than females. Adults

return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

Populations of northern elephant seals in the U.S. and Mexico were all originally derived from a few tens or a few hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.,* 1994). Given the very recent derivation of most rookeries, no genetic differentiation would be expected. Although movement and genetic exchange continues between rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja California population. The California breeding population is considered in NMFS stock assessment report to be a separate stock.

A complete population count of elephant seals is not possible because all age classes are not ashore at the same time. Elephant seal population size is typically estimated by counting the number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Based on the estimated 35,549 pups born in California in 2005 and an appropriate multiplier for a rapidly growing population, the California stock was approximately 124,000 in 2005. The minimum population size for northern elephant seals can be estimated very conservatively as 74,913, which is equal to twice the observed pup count (to account for the pups and their mothers), plus 3,815 males and juveniles counted at the Channel Islands and central California sites in 2005 (Lowry, NMFS unpublished data). Based on trends in pup counts, northern elephant seal colonies were continuing to grow in California through 2005, but appear to be stable or slowly decreasing in Mexico (Stewart *et al.,* 1994). Northern elephant seals are not listed under the ESA and are not considered as depleted or a strategic stock under the MMPA.

Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the City of San Diego's IHA application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/sars/.*

Potential Effects on Marine Mammals

Richardson *et al.* (1995) has documented changes in behavior and auditory threshold shifts in response to in-air and underwater noise. Behavioral responses to loud noises could include startling, alertness, changes in physical movement, temporary flushing from the beach, site abandonment, and pup abandonment (Allen, 1991; Kastak and Schusterman, 1996; Kastak *et al.,* 1999; Hanan & Associates, 2011). NMFS and the City of San Diego anticipate short-term behavioral impacts on pinnipeds at the Children's Pool to include startling, alertness, changes in physical movement, temporary flushing from the beach, and general diminished use of the haul-out site during the proposed construction activities (Hanan & Associates, 2011).

The City of San Diego requests authorization for Level B harassment of three species of marine mammals (i.e., Pacific harbor seals, California sea lions, and northern elephant seals) incidental to the use of equipment and its propagation of in-air noise from various acoustic mechanisms associated with the proposed construction activities of the Children's Pool Lifeguard Station at La Jolla, CA discussed above. Several species of marine mammals may potentially occur in the specified geographic area and thus may be affected by the proposed action. Pacific harbor seals are the most common species, the California sea lion and northern elephant seal are observed occasionally, and thus considered likely to be exposed to sound associated with the proposed construction activities. Behavioral disturbance may potentially occur as well incidental to the visual presence of humans and proposed construction activities; however, pinnipeds at this site have likely adapted or become acclimated to human presence at this site. These ''urbanized'' harbor seals do not exhibit sensitivity at a level similar to that noted in harbor seals in some other regions affected by human disturbance (Allen *et al.,* 1984; Suryan and Harvey, 1999; Henry and Hammil, 2001; Johnson and Acevedo-Gutierrez, 2007; Jansen *et al.,* 2006; Hanan & Associates, 2011). Lifeguards at the Children's Pool and nearby areas estimate that an average of 1,556,184 people per year or 129,682 per month visit the site from 2010 to 2012. The vast majority of these visitors have come to the Children's Pool specifically to watch the harbor seals. A maximum of 15 personnel, at any one time, are expected to be part of the construction activities.

Current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a threshold for potential Level B harassment, is at or above 90 dB re 20 μPa for harbor seals and at or above 100 dB re 20 μPa for all other pinniped species (Lawson *et al.,* 2002; Southall *et al.,* 2007). The acoustic mechanisms involved entail in-air non-impulsive noise caused by the proposed construction activities. Expected in-air noise levels are anticipated to result in elevated sound intensities near the proposed construction activities. No other mechanisms or sound sources are expected to affect marine mammal use of the area. The other operations and activities associated with the proposed construction activities would not affect the haul-out and would not entail noise, that is materially different from normal operations at the lifeguard station, to which the animals may be somewhat habituated already.

Since no proposed construction activities will be performed during the pupping and weaning season (i.e., mid-December through mid-May), there will be no impacts on birthing rates or pup survivorship at the Children's Pool. There will be no in-water construction activities in or near the water so pinniped activities in the water should not be affected. Additionally, pinnipeds utilizing the Children's Pool beach as a haul-out site are a very small portion of the species and/or stock populations and any impacts would have little effect at the species and/or stock population levels.

As noted above, current NMFS practice, regarding exposure of marine mammals to high-level in-air sounds, as a potential threshold for Level B harassment, is at or above 90 dB re 20 μPa for harbor seals and at or above 100 dB re 20 μPa for all other pinniped species. Pinnipeds at Children's Pool are likely already exposed to and habituated to loud noise and human presence, and thus may have areas of effect comparable to the radius of effect calculated for noise from the proposed construction activities. Behavioral considerations suggest that the pinnipeds would be able to determine that a noise source does not constitute a threat if it is more than a certain distance away, and the sound levels involved are not high enough to result in injury (Level A harassment). Nonetheless, these data suggest that proposed construction activities may affect pinniped behavior throughout the Children's Pool area, i.e., within approximately a few hundred feet of the activity. The nature of that effect is unpredictable, but logical responses on the part of the pinnipeds include tolerance (noise levels would likely not be loud enough to induce temporary threshold shift in harbor seals), or avoidance by using haul-outs or by foraging outside of the immediate Children's Pool area.

In-Air Noise—The principal source of in-air noise would be from a backhoe,

dump truck, air compressor, electric screw guns, jackhammer, concrete saw, and chop saws used for the proposed construction activities. Background noise levels near the Children's Pool are likely already elevated due to normal activities (e.g., human presence and traffic) and the ocean. There have been no studies conducted at the Children's Pool regarding background noise in the area, but the City of San Diego will conduct pre- and post-acoustic monitoring to determine ambient sound levels as well as noise-levels generated from the construction activities. Marine mammals at Children's Pool haul-outs are presumably tolerant and acclimated to the daily coming and going of humans, automobiles, and to other existing activities at the proposed action area. These proposed activities may occur at any time of the day (i.e., during daylight between 7:00 a.m. and 7:00 p.m.) for periods of up to several hours at a time.

Hanan & Associates (2004) noted that harbor seals hauled-out at the Children's Pool are exposed to the constant presence of humans (on the beach, sea wall, lifeguard tower, and sidewalks). There are so many human visitors to the Children's Pool site at all hours of the day and night, season, and weather that human scent and visual presence are generally not considered a concern (Hanan, 2004; Hanan & Associates, 2011). At this site, the Pacific harbor seals are most disturbed when people get very close to them on the beach (i.e., probably less than 2 to 3 m [6.6 to 9.8 ft]). However, the City of San Diego requested incidental take coverage in case pinnipeds alert and/or flush into the water due to the novel presence, visual stimuli, and/or sounds of construction equipment not previously experienced by pinnipeds at this location. The contractors will not directly approach the Pacific harbor seals during the construction activities.

At the individual level, a newly arrived pinniped (moved in from another area) may not have acclimated to humans and noise as pinnipeds that have been on site for awhile. These recent arrivals may alert to these stimuli, perhaps flushing into the water. However, after a few days of using the beach at Children's Pool, the City of San Diego would expect the pinnipeds to acclimate and not react to humans (unless close to them) or noises at the proposed construction activities site. Observations have shown that loud and startling noises have consistently caused some of the harbor seals at the site to flush into the water, and generally the harbor seals returned to the haul-out site within a short time (Hanan & Associates, 2002; Yochem, 2004; Hanan & Associates, 2011).

Although harbor seals could also be affected by in-air noise and activity associated with proposed construction at the lifeguard station, harbor seals at Children's Pool haul-outs are presumably acclimated to human activity to some extent due to the daily coming and going (i.e., presence) of humans, and to other existing activities in the area. These proposed activities may occur during daylight hours and may produce noise for periods of up to several hours at a time. The operation of loud equipment are above and outside of the range of normal activity at the Children's Pool and have the potential to cause seals to leave a haul-out at the Children's Pool. This would constitute Level B harassment (behavioral). In view of the relatively small area that would be affected by elevated in-air noise and the proximity to the haul-out sites, it appears probable that some harbor seals could show a behavioral response, despite their tolerance to current levels of human-generated noise; incidental take by this mechanism may occur during the proposed construction activities.

Harbor seal presence in the activity area is perennial, with daily presence at a nearby haul-out (Seal Rock is several hundred yards east of the Children's Pool site) during the months when the activity would occur. The potentially affected harbor seals include adults of both sexes. The harbor seals at Children's Pool may be non-migratory residents, exhibiting site fidelity at the haul-out sites. Harbor seals often stay within a 50 km (31.1 miles) range of haul-outs, but young individuals and adult males have lower site fidelity and dispersal rates. Adult females are known to mate and give birth in the area where they were born (i.e., high degree of natal philopatry) (Harkonen and Harding, 2001; Linder, 2011). Cannon (2009) documented individuals moving between haul-out sites at Las Islas Coronados, Mexico and the Children's Pool, which are located approximately 50 km apart (Linder, 2011). However, it is possible that at least some of the harbor seals using this site come from moderate distances, as they are known to travel distances up to approximately 550 km (297 nmi) for foraging or mating purposes (Herder, 1986; Linder, 2011; Hanan & Associates, 2011). A study by Greenslade (2002) on diet and foraging ecology suggests that the harbor seals at Children's Pool travel some distance away from the haul-out site to feed, as the main prey species in their diet (i.e., Pacific sanddab and Pacific hake) do not occur in the kelp forest near the La Jolla area (Linder, 2011).

Although harbor seals are tolerant to the presence of humans and other visible and non-visible disturbances, they may display a range of behaviors when exposed to noise from proposed construction activities. Using the webcam, WAN has documented that when major flushing events occur it can take a day or two for them to return in the same numbers. Videos of these events can be found online at: *http://www.youtube.com/watch?v=UWH3z2iP1Ms&Feature=youtu.be* and *http://www.youtube.com/watch?v=VRQyn6IOUxY.*

It is likely that many harbor seals in the ''urbanized'' population would be affected more than once over the course of the proposed construction period; therefore, it is possible that some measure of adaptation or acclimatization would occur on the part of the harbor seals, whereby they would tolerate elevated noise levels and/or utilize haul-outs relatively distant from the proposed construction activities. This strategy is possible, but it is difficult to predict whether the harbor seals would show such a response. Project scheduling avoids the most sensitive breeding phases of harbor seals. Proposed project activities producing in-air noise would commence in June, after pupping season and when pups have been weaned. Proposed project activities producing in-air noise are scheduled to terminate by the middle of December, which is before adult female harbor seals begin pupping. Visibly pregnant females may begin using this site in November, and perhaps as early as October.

Effects on California Sea Lions and Northern Elephant Seals—California sea lions and northern elephant seals, although abundant in northern California waters, have seldom been recorded at the Children's Pool. Their low abundance in the area may be due to the presence of a large and active harbor seal population there, which likely competes with the California sea lions and northern elephant seals for foraging resources. Any California sea lions that visit the proposed action area during construction activities would be subject to the same type of impacts described above for harbor seals. There is a possibility of behavioral effects related to project acoustic impacts, in the event of California sea lion and northern elephant seal presence in the activity area. California sea lions and northern elephant seals have been seen in the proposed activity area, albeit infrequently, and there are no quantitative estimates of the frequency

of their occurrence. Assuming that they are present, it is possible California sea lions and northern elephant seals might be subject to behavioral harassment.

The potential effects to marine mammals described in this section of the document generally do not take into consideration the monitoring and mitigation measures described later in this document (see the ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'' sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species or stocks.

Anticipated Effects on Marine Mammal Habitat

All proposed construction activities are beyond or outside the habitat areas where harbor seals and other pinnipeds are found. Visual barriers would be erected to shield construction activities from the visual perception and potentially dampen acoustic effects on pinnipeds. Because the public occasionally harasses the harbor seals with various activities, the NMFS-qualified PSO monitoring the site will make observations and attempt to distinguish and attribute any observed harassment to the public or to the proposed construction activities and give all details in the observation report. If any short-term, temporary impacts to habitat due to sounds or visual presence of equipment and workers did occur, the City of San Diego would expect pinniped behavior to return to pre-construction conditions soon after the activities are completed which is anticipated to occur before the next pupping season (Hanan & Associates, 2011). This site is already very disturbed by member of the public who come to the area during the day and night to view the pinnipeds. The City of San Diego and NMFS do not project any loss or modification of physical habitat for these species. Any potential temporary loss or modification of habitat due to in-air noise or visual presence of equipment and workers during the proposed activities is expected by the City of San Diego and NMFS to be quickly restored after proposed construction activities end and all equipment and barriers are removed.

The anticipated adverse impacts upon habitat consist of temporary changes to the in-air acoustic environment, as detailed in the IHA application. These changes are minor, temporary, and of limited duration to the period of proposed construction activities. No aspect of the project is anticipated to have any permanent effect on the location of pinniped haul-outs in the area, and no permanent change in seal or sea lion use of haul-outs and related habitat features is anticipated to occur as a result of the project (Hanan & Associates, 2011). The temporary impacts on the acoustic environment are not expected to have any permanent effects on the species or stock populations of marine mammals occurring at the Children's Pool. The area of habitat affected is small and the effects are temporary, thus there is no reason to expect any significant reduction in habitat available for foraging and other habitat uses.

NMFS anticipates that the proposed action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the Children's Pool less desirable during construction activities of the Children's Pool Lifeguard Station as the impacts will be localized.

Proposed Mitigation

Any Incidental Take Authorization (ITA) issued under section 101(a)(5)(D) of the MMPA, must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The City of San Diego has established the Children's Pool as a shared beach for pinnipeds and people. In the past, during the pupping season, a rope was placed along the upper part of the beach with signage to inform and designate how close people can come to the haul-out area and the pinnipeds. The timeframe for the rope has been extended so that it is now present year-round. The proposed construction activities are planned to occur outside the harbor seal pupping and weaning periods. Visual and acoustic barriers were constructed in 2013. The visual and acoustic barriers were constructed of plywood, 1.2 to 2.4 m (4 to 8 ft) tall stood on end and held up by wood posts. The barriers were placed at the site with input from NMFS Southwest Regional Office (SWRO) personnel so that they will hide as advantageously as possible the proposed construction activities that may be seen by pinnipeds. The barriers appear to dampen the acoustic sound sources, but do not prevent sound from permeating the environment. The barriers also appear to hide and reduce visual cues that may stimulate behavioral reactions from the pinnipeds on the beach below. As the site is a beach with construction along the cliff and on flat areas above the cliff, a complete barrier cannot be constructed to hide all proposed construction activities for the project. Once the walls of the lifeguard station's building are in place, much of the proposed construction activities will take place above the Children's Pool beach (i.e., out of sight) as well as inside the building (i.e., a visual and partial sound barrier). There will be no activities in the ocean or closer to the water's edge and since harbor seals mate underwater in the ocean, there will be no impacts on mating activities. California sea lions and northern elephant seals are such infrequent users of this area and their rookeries are so far away (at least 104.6 km [65 miles] at offshore islands) that there will be no adverse impact on these species.

As part of the public comment process for the issuance of the previous 2013 IHA, NMFS modified several of the monitoring and mitigation measures included in the proposed IHA (78 FR 25958, May 3, 2013) for practicability reasons, as well as included several additional measures in the final IHA (78 FR 40705, July 8, 2013). These include changing the pupping season from December 15th to May 15th and prohibiting construction activities during this time; extending construction activities from 7:00 a.m. to 7:00 p.m. to help assure that more work is completed during the 2013 construction window; continuing monitoring for 60 days following the end of construction activities; and triggering a shut-down of construction activities in the unexpected event of abandonment of the Children's Pool site. The mitigation measure on scheduling the heaviest construction activities (with the highest sound levels) during the annual period of lowest haul-out occurrence (October to November) was removed as it was included in the City of San Diego's Mitigated Negative Declaration when it was anticipated that the City of San Diego would obtain an IHA in the summer of 2012 and begin demolition and construction activities in the fall of 2012. This is no longer practicable due to logistics, scheduling and to allow the planned activities to be completed before the next pupping season.

The activities proposed by the applicant includes a variety of measures calculated to minimize potential impacts on marine mammals, including:

- Construction shall be prohibited during the Pacific harbor seal pupping season (December 15th to May 15th) and for an additional four weeks to accommodate lactation and weaning of late season pups. Thus, construction

shall be prohibited from December 15th to June 1st.

• Construction activities shall be scheduled, to the maximum extent practicable, during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m.; however, construction activities may be extended from 7:00 a.m. to 7:00 p.m. to help assure that the project can be completed during the 2014 construction window. Harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3:00 p.m. to 6:00 p.m.

• A visual and acoustic barrier will be erected and maintained for the duration of the project to shield construction activities from beach view. The temporary barrier shall consist of ½ to ¾ inch (1.3 to 1.9 centimeters [cm]) plywood constructed 1.8 to 2.4 m (6 to 8 ft) high depending on the location.

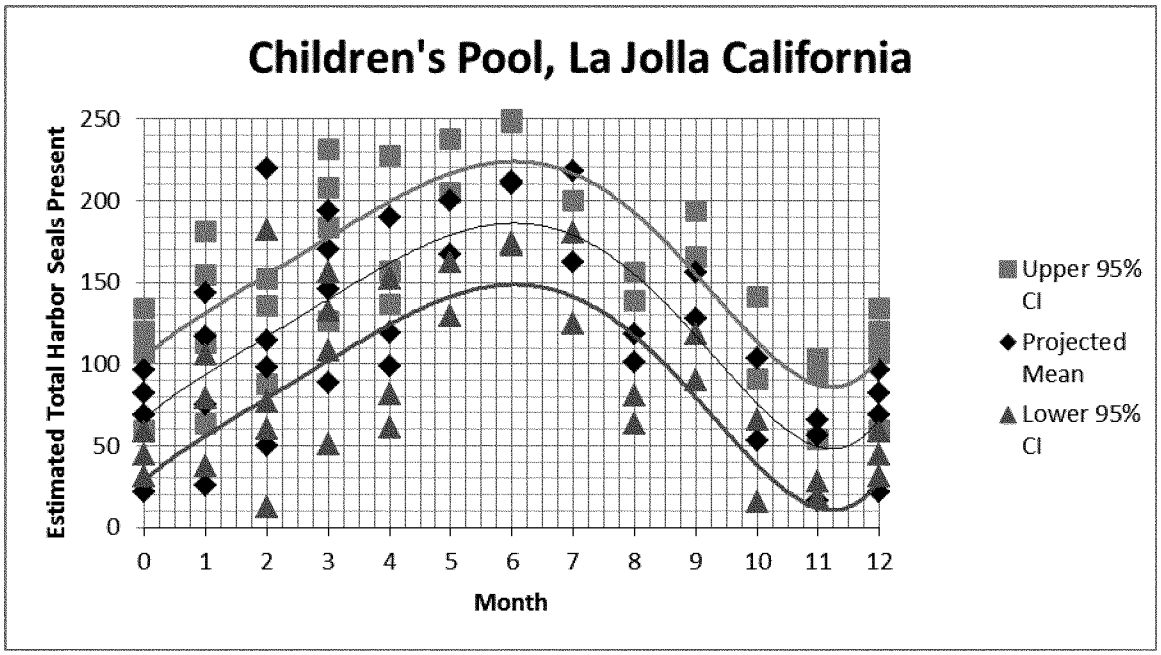
• Use of trained PSOs to detect, document, and minimize impacts (i.e., possible shut-down of noise-generating operations [turning off the equipment so that in-air sounds associated with construction no longer exceed levels that are potentially harmful to marine mammals]) to marine mammals.

Timing Constraints for In-Air Noise

To minimize in-air noise impacts on marine mammals, construction activities shall be limited to the period when the species of concern will be least likely to be in the project area. The construction window for construction activities shall be from June 1 to December 15, 2014. The IHA may extend through June 1 through June 27, 2015 to finish the proposed construction activities if needed. Avoiding periods when the highest number of marine mammal individuals are in the action area is another mitigation measure to protect marine mammals from the proposed construction activities.

Abandonment

After the first two months of monitoring during construction activities, the City of San Diego will take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across that two months and compare it to the mean of the lower 95 percent confidence interval in Figure 1 (see below). If the observed mean is lower, the City of San Diego will shut-down construction activities and work with NMFS and other harbor seal experts (e.g., Mark Lowry, Dr. Sarah Allen, Dr. Pamela Yochem, and/or Dr. Brent Stewart) to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts. Once a week every week thereafter, the City of San Diego will take the same mean of observed harbor seals across the previous three tide cycles (a tide cycle is approximately 2 weeks) and compare it to the 95% lower confidence interval in Figure 1 for the same time period. If the observed mean is lower, the City of San Diego will shut-down and take the action described above. If abandonment of the site is likely, monitoring will be expanded away from the Children's Pool to determine if animals have been temporarily displaced to known haul-out sites in the southern California area (e.g., north end of Torrey Pines, cave on the exposed ocean side of Point Loma, etc.). For the purpose of this proposed action, NMFS will consider the Children's Pool site to possibly be abandoned if zero harbor seals are present each day during the daytime and nighttime hours for at least three tide cycles (a tide cycle is approximately 2 weeks), but this cannot be confirmed until observations continue to be zero during a full pupping and molting season.



More information regarding the City of San Diego's monitoring and mitigation measures, for the proposed construction activities at the Children's Pool Lifeguard Station can be found in the IHA application.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation in one another:

• The manner in which, and the degree to which, the successful

implementation of the measure is expected to minimize adverse impacts to marine mammals;

• The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

• The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the activity.

NMFS has determined that the proposed mitigation measures will effect the least practicable adverse impact on the species or stocks of marine mammals in the action area.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) require that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The City of San Diego has developed a monitoring plan (see Appendix I. Mitigated Negative Declaration in the IHA application) based on discussions between the project biologist, Dr. Doyle Hanan, and NMFS biologists. The plan has been vetted by City of San Diego planners and reviewers. The plan has been formally presented to the public for review and comment. The City of San Diego has responded in writing and in public testimony (see City of Council Hearing, December 14, 2011) to all public concerns.

The basic plan is to survey prior to construction activities and then monitor construction activities by NMFS-approved PSOs with high-resolution binoculars and handheld digital sound level meters (measuring devices). PSOs will observe from a station along the breakwater wall as well as the base of the cliff below the proposed construction area. PSOs will be on site approximately 30 minutes before the start of construction activities and continue for 30 minutes after activities have ceased. Monitors will have authority to stop construction as necessary depending on sound levels, pinniped presence, and distance from sound sources. Daily monitoring reports will be maintained for periodic summary reports to the City of San Diego and to NMFS. Observations will be entered into and maintained on Hanan & Associates computers. The City of San Diego plans to follow the reporting in the Mitigated Negative Declaration that states ''the biologist shall document field activity via the Consultant Site Visit Record. The Consultant Site Visit Record shall be either emailed or faxed to the City of San Diego's Mitigation Monitoring Coordination process (MMC) on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented discovery. The project biologist shall submit a final construction monitoring report to MMC within 30 days of construction completion.'' The MMC ''coordinates the monitoring of development projects and requires that changes are approved and implemented to be in conformance with the permit requirements and to minimize any damage to the environment.'' These documents will also be sent to NMFS.

The City of San Diego will include sound measurements at and near the proposed construction site in their initial survey prior to the activities as a background and baseline for the project. While no specific acoustic study is planned, the City of San Diego's Mitigated Negative Declaration states that marine mammal monitoring shall be conducted for three to five days prior to construction and shall include hourly systematic counts of pinnipeds using the beach, Seal Rock, and associated reef areas. Monitoring three to five days prior to construction will provide baseline data regarding recent haul-out behavior and patterns as well as background noise levels near the time of the proposed construction activities. The City of San Diego has modified its monitoring program to include 60 days of monitoring post- construction activities. Following construction, the City of San Diego will have a program of onsite PSOs that will randomly select a day per week to monitor. During the proposed construction activities, monitoring shall assess behavior and potential behavioral responses to construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to proposed construction. The City of San Diego plans to make hourly counts of the number of pinnipeds present and record sound or visual events that result in behavioral responses and changes, whether during construction or from public stimuli. During these events, pictures and video will also be taken when possible. The ''Mitigated Negative Declaration'' states ''monitoring shall assess behavior and potential behavioral responses to construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction.''

The WAN's La Jolla Harbor Seal Webcam was attached to the old (now demolished) lifeguard station and is no longer available online (*http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm);* therefore, the City of San Diego cannot do periodic checks using the webcam for monitoring purposes as required during the 2013 IHA. The City of San Diego has stated that there is no suitable place to mount the camera at the construction site. The camera was not expected to replace NMFS-qualified PSOs at the site making accurate counts, measuring sound levels and observing the public and the construction, as well as the harbor seals. In the old camera view, a person may be able to see visual evidence of Level B harassment, but it probably would not be able to be distinguished between harassment from construction activities and the public since the camera has a limited scope and only shows the Children's Pool beach and pinnipeds (usually a specific portion of the beach, but not the reef nor nearby beaches).

Consistent with NMFS procedures, the following marine mammal monitoring and reporting shall be performed for the proposed action:

(1) The PSO shall be approved by NMFS prior to construction activities.

(2) The NMFS-approved PSO shall attend the project site prior to, during, and after construction activities cease each day throughout the construction window.

(3) The PSO shall search for marine mammals within the Children's Pool area.

(4) The PSO shall be present during construction activities to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity will occur during daylight hours (i.e., 30 minutes after sunrise and 30 minutes before sunset). If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow.

(5) If marine mammals are sighted by the PSO within the acoustic threshold areas, the PSO shall record the number of marine mammals within the area of effect and the duration of their presence while the noise-generating activity is occurring. The PSO will also note whether the marine mammals appeared to respond to the noise and if so, the nature of that response. The PSO shall

record the following information: date and time of initial sighting, tidal stage, weather conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, etc.), number, group composition, distance to sound source, number of animals impacted, construction activities occurring at time of sighting, and monitoring and mitigation measures implemented (or not implemented). The observations will be reported to NMFS.

(6) A final report will be submitted summarizing all in-air construction activities and marine mammal monitoring during the time of the authorization, and any long term impacts from the project.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of in-air noise generating activities, and description of the activities;
- Distances to all marine mammals relative to the sound source;
- For harbor seal observations, notes on seal behavior during noise-generating activity, as described above, and on the number and distribution of seals observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to noise-generating activities;
- Time of the cessation of in-air noise generating activities; and
- Time of observer departure from site.

All monitoring data collected during proposed construction will be included in the biological monitoring notes to be submitted. A final report summarizing the construction monitoring and any general trends observed will also be submitted to NMFS within 90 days after monitoring has ended during the period of the lifeguard station construction.

The City of San Diego would notify NMFS Headquarters and the NMFS Southwest Regional Office prior to initiation of the construction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the construction activities of the Children's Pool Lifeguard Station. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations, and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, etc.], tidal stage, weather conditions, Beaufort sea state and wind force, activities, associated construction activities). A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

While the IHA would not authorize injury (i.e., Level A harassment), serious injury, or mortality, should the applicant, contractor, monitor or any other individual associated with the construction project observe an injured or dead marine mammal, the incident (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1–800–541–7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, NMFS shall be notified as well, but for immediate response purposes, Sea World shall be contacted first.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov* and the West Coast Regional Stranding Coordinator (*Justin.Greenman@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- The type of activity involved;
- Description of the circumstances during and leading up to the incident;
- Status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved;
- The fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS West Coast Regional Office (1–866–767–6114) and/or by email to the West Coast Regional Stranding Coordinator (*Justin.Greenman@noaa.gov*). The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the City of San Diego to determine whether modifications in the activities are appropriate.

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS West Coast Regional Office (1–866–767–6114) and/or by email to the West Coast Regional Stranding Coordinator (*Justin.Greenman@noaa.gov*), within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

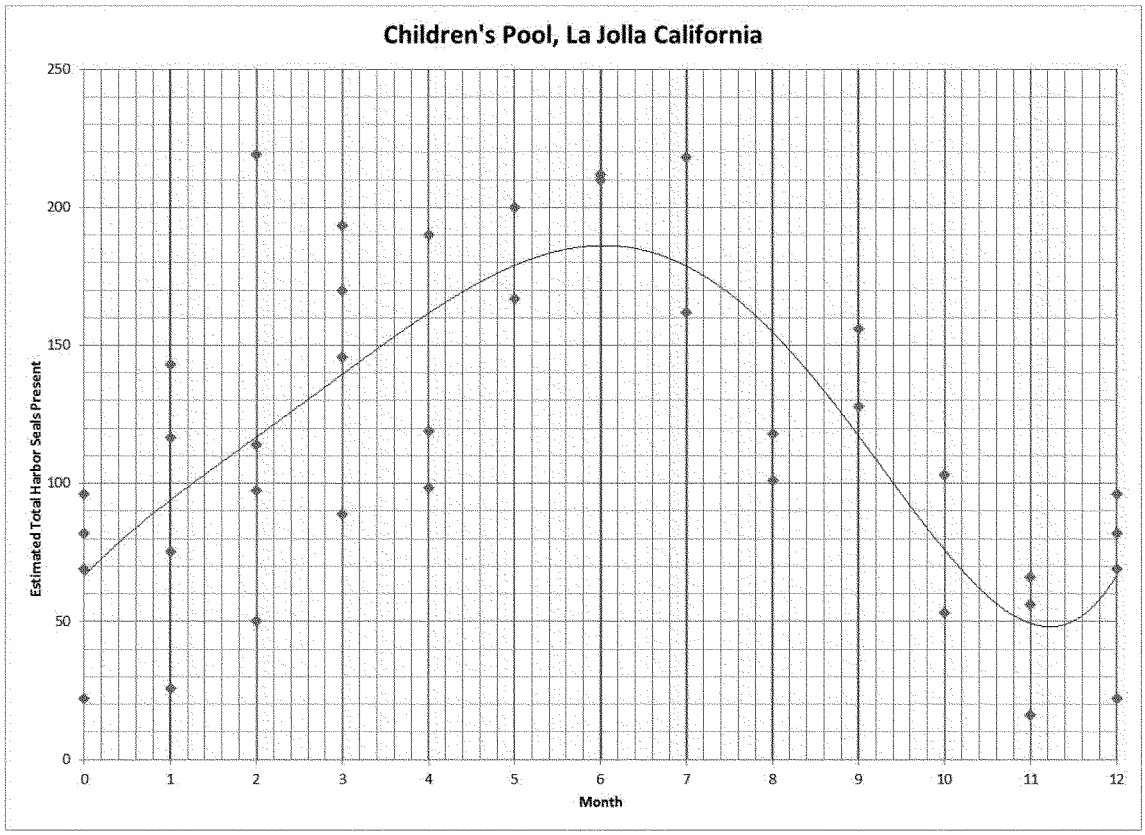
Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The City of San Diego and NMFS anticipate takes of Pacific harbor seals, California sea lions, and northern elephant seals by Level B (behavioral) harassment only incidental to the proposed construction project at the Children's Pool. No takes by injury (Level A harassment), serious injury, or mortality is expected. There is a high likelihood that many of the harbor seals present during the proposed construction activities will not be flushed off of the beach or rocks, as pinnipeds at this site are conditioned to human presence and loud noises (Hanan, 2004; Hanan & Associates, 2011) (see *http://www.youtube.com/watch?v=4IRUYVTULsg*).

With proposed construction activities scheduled to begin in June 2014, the City of San Diego expects a range of 0 to 190 harbor seals to be present daily during June and a seasonal decline through November to about 0 to 50 harbor seals present daily. If all of the estimated harbor seals present are taken by incidental harassment each day, there could be a maximum of 10,000 takes (i.e., approximately 2,947 adult males and 2,211 juvenile males, 2,842 adult females and 2,000 juvenile females based on age and sex ratios presented in Harkonen *et al.,* 1999) over the entire duration of the activities. The City of San Diego expects about 90% of the adult females to be pregnant after June and July (Greig, 2002). An unknown portion of the incidental takes would be from repeated exposures as harbor seals leave and return to the Children's Pool area. A polynomial curve fit to counts by month was used by the City of San Diego to estimate the number of harbor seals expected to be hauled-out by day (see below and Figure 2 of the IHA application).

Figure 2. Estimated total harbor seals by month based on counts at the site by Hanan & Associates, Yochem and Stewart, and Children's Pool docents. The polynomial curve fits to counts by months was used to estimate harbor seals expected to be hauled-out by day.



Assuming the total seals predicted to haul-out daily at the Children's Pool are exposed to sound levels that are considered Level B harassment during days where sound is predicted to exceed 90 dB at the proposed construction site (65 days), there could be a maximum of approximately 10,000 incidental takes (i.e., exposures) of approximately up to 600 individual Pacific harbor seals over the duration of the activities. The estimated 600 individual Pacific harbor seals will be taken by Level B harassment multiple times during the proposed construction activities. Very few California sea lions and/or northern elephant seals are ever observed at the Children's Pool (i.e., one or two individuals). The City of San Diego requests the authority to incidentally take (i.e., exposures) 10,000 Pacific harbor seals, 100 California sea lions, and 25 northern elephant seals, which would equate to 600, 2, and 1 individuals, respectively, being exposed multiple times. More information on the number of requested authorized takes, estimated number of individuals, and the approximate percentage of the stock

for the three species in the action area can be found in Table 2 (below).

NMFS will consider pinnipeds flushing into the water; moving more than 1 m (3.3 ft), but not into the water; becoming alert and moving, but do not move more than 1 m; and changing direction of current movement by individuals as behavioral criteria for take by Level B harassment. The City of San Diego will estimate the portion of pinnipeds present that are observed to exhibit these behaviors as well as the apparent source of the stimulus (i.e., if it is from human presence, construction activities, or other).

TABLE 2—SUMMARY OF THE ANTICIPATED INCIDENTAL TAKE BY LEVEL B HARASSMENT OF PINNIPEDS FOR THE CITY OF SAN DIEGO'S PROPOSED CONSTRUCTION ACTIVITIES GENERATING IN-AIR NOISE AT THE CHILDREN'S POOL LIFEGUARD STATION IN LA JOLLA, CA

Species	Requested Take Authorization (Number of Exposures)	Estimated Number of Individuals Taken	Approximate Percentage of Estimated Stock (Individuals)
Pacific harbor seal	10,000	600	1.98
California sea lion	100	2	<0.01
Northern elephant seal	25	1	<0.01

Encouraging and Coordinating Research

Each construction phase and potential harassment activity will be evaluated as to observed sound levels and any pinniped reaction by type of sound source. Flushing will be documented by sex and age class. These data will provide instructional for IHA permitting in future projects. Potential mitigation will be discussed and suggested in the final report. NMFS has encouraged the City of San Diego to work with WAN to review and analyze any available data to determine baseline information as well as evaluate the impacts from the construction activities on the pinnipeds at the Children's Pool.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

No injuries (Level A harassment), serious injuries, or mortalities are anticipated to occur as a result of the City of San Diego's proposed construction activities, and none are authorized by NMFS. The proposed activities are not expected to result in the alteration of reproductive behaviors, and the potentially affected species would be subjected to only temporary and minor behavioral impacts.

As discussed in detail above, the proposed project scheduling avoids sensitive life stages for Pacific harbor seals. Proposed project activities producing in-air noise would commence in June and end by December 15th. June is after the end of the pupping season and affords additional time to accommodate lactation and weaning of season pups as well as considers periods of lowest haul-out occurrence. The December 15th end date should provide more protection for the pregnant and nursing harbor seals in case they give birth before January 1st; however, most births occur after the beginning of January. Table 2 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these proposed activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, this activity is not expected to impact rates of annual recruitment or survival for the affected species or stock (i.e., California stock of Pacific harbor seals, U.S. stock of California sea lions, and California breeding stock of northern elephant seals), particularly given the NMFS and the applicant's plan to implement required mitigation, monitoring, and reporting measures to minimize impacts to marine mammals.

For the other marine mammal species that may occur within the proposed action area, there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). However, for many years Pacific harbor seals have been hauling-out at Children's Pool during the year (including during pupping season and while females are pregnant) and have been exposed to anthropogenic sound sources such as vehicle traffic, human voices, etc. and are frequently exposed to stimuli from human presence. While studies have

shown the types of sound sources used during the proposed construction activities have the potential to displace marine mammals from breeding areas for a prolonged period (e.g., Lusseau and Bejder, 2007; Weilgart, 2007), based on the best available information, this does not seem to be the case for the Pacific harbor seals at the Children's Pool. Over many years, the Pacific harbor seals have repeatedly hauled-out to pup and overall the NMFS Stock Assessment Reports (NMFS, 2011) for this stock have shown that the population is increasing and is considered stable. Additionally, the proposed construction activities will be increasing sound levels in the environment in a relatively small area surrounding the lifeguard station (compared to the range of the animals), and some animals may only be exposed to and harassed by sound for less than a day.

Of the 3 marine mammal species under NMFS jurisdiction that may or are known to likely occur in the proposed action area, none are listed as threatened or endangered under the ESA. No incidental take has been requested to be authorized for ESA-listed species as none are expected to be within the proposed action area. There is generally insufficient data to determine population trends for the other depleted species in the proposed study area. To protect these animals (and other marine mammals in the proposed action area), the City of San Diego shall schedule construction activities with highest sound levels during the annual period of lowest haul-out occurrence and during the daily period of lowest haul-out occurrence; limit activities to the hours of daylight; erect a temporary visual and acoustic barrier; use PSOs and prohibit construction activities during harbor seal pupping season. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, and the proposed activity is not expected to impact rates of recruitment or survival.

Small Numbers

As mentioned previously, NMFS estimates that 3 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the proposed IHA. It is estimated that up to 600 individual Pacific harbor seals, 2 individual California sea lions, and 1 northern elephant seal will be taken (multiple times) by Level B harassment, which would be approximately 1.98, less than 0.01, and less than 0.01 of the respective California, U.S., and California breeding stocks. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 2 of this document. NMFS's practice has been to apply the 90 dB re 20 μPa and 100 dB re 20 μPa received level threshold for in-air sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]). NMFS has not established a threshold for Level A harassment (injury) for marine mammals exposed to in-air noise, however, Southall *et al.* (2007) recommends 149 dB re 20 μPa (peak flat) as the potential threshold for injury from in-air noise for all pinnipeds. No in-air sounds from proposed construction activities will exceed 110 dB at the source and no measured sounds approached that sound level in 2013.

While behavioral modifications, including temporarily vacating the area during the proposed construction activities, may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the proposed activities, have led NMFS to determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. NMFS believes that the time period of the proposed construction activities, the requirement to implement mitigation measures (e.g., prohibiting construction activities during pupping season, scheduling operations to periods of the lowest haul-out occurrence, visual and acoustic barriers, and the addition of a new measure that helps protect against unexpected abandonment of the site), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the proposed activity to the degree that will have a negligible impact on the species or stocks in the proposed action area.

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of the proposed construction activities at the Children's Pool Lifeguard Station in La Jolla, CA, June 2014 to June 2015, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. See Table 2 for the requested authorized take numbers of marine mammals. Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses.

There are not relevant subsistence uses of marine mammals implicated by this action in the action area (off of southern California in the northeast Pacific Ocean). Therefore, NMFS has determined that the total taking of affected marine mammal species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

NMFS (Permits and Conservation Division) has determined that a section 7 consultation for the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity is not necessary for any ESA-listed marine mammal species under its jurisdiction as the proposed action will not affect ESA-listed species.

National Environmental Policy Act

To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to the City of San Diego, NMFS prepared an Environmental Assessment (EA) in 2013 for a similar activity titled ''Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California'' to comply with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216–6. NMFS will evaluate the proposed action to determine whether the 2013 EA supports the City of San Diego's 2014 IHA request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of San Diego for conducting construction activities at the Children's Pool Lifeguard Station in La Jolla, CA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance. The proposed IHA language is provided below:

City of San Diego, Engineering and Capital Projects Department, 600 B

Street, Suite 800, MS 908A, San Diego, California 92101–4502, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)), to harass small numbers of marine mammals incidental to the construction activities at the Children's Pool Lifeguard Station, June 2014 through June 2015, contingent upon the following conditions:

1. This Authorization is valid from June 28, 2014 through June 27, 2015.

2. This Authorization is valid only for the construction activities at the Children's Pool Lifeguard Station that shall occur in the following specified geographic area:

The La Jolla Children's Pool Lifeguard Station at 827½ Coast Boulevard, La Jolla California 92037 (32°50′50.02″ North, 117°16′42.8″ West), as specified in the City of San Diego's Incidental Harassment Authorization application.

3. *Species Authorized and Level of Takes*

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the La Jolla, California area:

(i) *Pinnipeds*—see Table 2 (above) for authorized species and take numbers.

(ii) If any marine mammal species are encountered during construction activities that are not listed in Table 2 (above) for authorized taking and are likely to be exposed to sound pressure levels (SPLs) at or above 90 decibels (dB) re 20 μPa for harbor seals and/or at or above 100 dB re 20 μPa for all pinniped species except harbor seals (for in-air noise), then the Holder of this Authorization must shut-down operations to avoid take.

(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) above, or the taking of any kind of any other species of marine mammal, is prohibited and may result in the modification, suspension or revocation of this Authorization.

4. The methods authorized for taking by Level B harassment are limited to acoustic-generating equipment sources (e.g., backhoe, dump truck, cement truck, air compressor, electric screw guns, jackhammer, concrete saw, chop saw, and hand tools) without an amendment to this Authorization:

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Office of Protected Resources, National Marine Fisheries Service (NMFS), at 301–427–8401.

6. *Mitigation and Monitoring Requirements.*

The Holder of this Authorization is required to implement the following mitigation and monitoring requirements when conducting the specified activities in order to achieve the least practicable adverse impact on affected marine mammal species or stocks:

(a) The construction activities shall be prohibited during the Pacific harbor seal pupping season at Children's Pool (December 15th to May 15th) and for an additional two weeks to accommodate lactation and weaning of late season pups. Thus, construction shall be prohibited from December 15th to June 1st.

(b) The construction activities shall be scheduled Monday through Friday; however, they may continue on weekends to ensure completion of the project in 2014. To the maximum extent practicable, the construction activities shall be conducted from approximately 8:30 a.m. to 3:30 p.m., during the daily period of lowest haul-out occurrence; however, construction activities may be extended from 7:00 a.m. to 7:00 p.m. (i.e., daylight hours) to help assure that the project is completed during the 2014 construction window. Harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3:00 p.m. to 6:00 p.m.

(c) A visual and acoustic barrier will be erected and maintained for the duration of the project to shield construction activities from beach view. The temporary barrier shall consist of 1.3 to 1.9 centimeter (½ to ¾ inch) plywood constructed 1.2 to 2.4 meters (4 to 8 feet) high depending on the location. The barriers will be placed at the site with input from NMFS Southwest Regional Office personnel so that they will hide as advantageously as possible the construction activities that may be seen by pinnipeds.

(d) Use a NMFS-approved, trained Protected Species Observer (PSO) to detect, document, and minimize potential impacts from construction activities. The PSO shall attend the project site 30 minutes prior until 30 minutes after construction activities cease each day throughout the construction window. The PSO shall be approved by NMFS prior to construction activities. The PSO shall search for marine mammals using binoculars and/or the naked eye within the Level B (behavioral) harassment zones, which may vary upon the type of in-air sound being produced by the construction activities. The PSO will observe from a station along the breakwater wall as well as the base of the cliff below the construction area. If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow. The PSO will not have to monitor on days or portions of days when there will be little chance of disturbance from construction activities (e.g., nothing visual, sound levels at source less than 90 dB re 20 μPa, or all work activities inside the building).

(e) The PSO shall visually scan the action area for the presence of marine mammals at least 30 minutes prior to the start-up and continuously throughout periods of in-air noise-generating activities. Visual scans shall continue for at least 30 minutes after each noise-generating episode has ceased.

(f) The PSO shall use visual digital recordings and photographs to document individuals and behavioral responses to the construction activities. The PSO shall make hourly counts of the number of pinnipeds present and record sound or visual events that result in behavioral responses and changes, whether during construction activities or from public stimuli. During these events, pictures and videos will be taken when possible to document individuals and behavioral responses.

(g) A PSO shall record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), distribution, bearing and distance relative to the sound source(s), group cohesiveness, duration of presence, apparent reaction to the construction activities (e.g., none, avoidance, approach, etc.), direction and speed of travel, duration of presence, and if there are other causes of potential disturbance occurring;

(ii) Date, time, location, activity of construction operations, monitoring and mitigation measures implemented (or not implemented), tidal stage, weather conditions, Beaufort sea state, wind speed, visibility, and sun glare; and

(iii) The data listed under Condition 6(g)(ii) shall also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more variables.

(h) A PSO shall also record the time of arrival and departure on site, commencement and cessation of in-air noise construction activities, and presence of humans on the beach. Whenever possible, the PSO should determine as to whether or not the harassment or pinnipeds is attributable to the construction activities and/or the presence of the public on the beach and around the Children's Pool area. A PSO shall record the number of people on the beach and surrounding areas as well as their location relative to the animals.

(i) Establish buffer zones (i.e., where sound pressure levels [SPLs] are at or above 90 decibels (dB) re 20 μPa for harbor seals and/or at or above 100 dB re 20 μPa for all pinniped species except harbor seals [for in-air noise]) around the construction activities so that in-air sounds associated with the construction activities no longer exceed levels that are potentially harmful to marine mammals.

(j) In-air noise monitoring and reporting shall be performed during the construction activities at and near the Children's Pool Lifeguard Station. The PSO shall have access to handheld digital sound level measuring devices. The study will characterize in-air sound levels in the area related to and in the absence of all construction activities (as a background and baseline for the project), and confirm or identify harassment isopleths for all types of and construction activities conducted. Monitoring shall be conducted three to five days prior to construction activities and shall include hourly systematic counts of pinnipeds using the beach, Seal Rock, and associated reef areas to provide baseline data regarding recent haul-out behavior and patterns as well as background noise levels near the time and construction activities. Monitoring shall continue for 60 days following the end of demolition and construction activities. Following construction, the City of San Diego will have a program where a PSO that will randomly select a day per week to visit the Children's Pool.

(k) After the first two months of monitoring during construction activities, the City of San Diego shall take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across the two months and compare it to the mean of the lower 95 percent confidence interval in Figure 1 (see below). If the observed mean is lower, the City of San Diego shall shut-down construction activities and work with NMFS and other harbor seal experts (e.g., Mark Lowry, Dr. Sarah Allen, Dr. Pamela Yochem, and/or Dr. Brent Stewart) to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts. Once a week every week thereafter, the City of San Diego shall take the same mean of observed harbor seals across the previous three tide cycles (a tide cycle is approximately 2 weeks) and compare it to the 95% lower confidence interval in Figure 1 for the same time period. If the observed mean is lower, the City of San Diego shall shut-down and take the action described above. If abandonment of the site is likely, monitoring shall be expanded away from the Children's Pool to determine if animals have been temporarily displaced to haul-out sites in the southern California area (e.g., Torrey Pines, Point Loma, etc.).

7. *Reporting Requirements.*

The Holder of this Authorization is required to:

(a) Submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the construction activities at the Children's Pool Lifeguard Station. This report must contain and summarize the following information:

(i) Dates, times, locations, weather, sea conditions (including Beaufort sea state and wind speed), and associated activities during all construction activities and marine mammal sightings;

(ii) Species, number, location, distance from the PSO, and behavior of any marine mammals, as well as associated construction activities, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that: (A) are known to have been exposed to the construction activities (based on visual observation) at received levels greater than or equal 90 dB re 20 μPa for harbor seals and 100 dB re 20 μPa for all other pinniped species for in-air noise with a discussion of any specific behaviors those individuals exhibited; and (B) may have been exposed (based on reported values and modeling measurements for the construction equipment) to the construction activities in-air noise at received levels greater than or equal 90 dB re 20 μPa for harbor seals and 100 dB re 20 μPa for all other pinniped species with a discussion of the nature of the probable consequences of that exposure on the individuals that have been exposed. NMFS will consider pinnipeds flushing into the water; moving more than 1 m (3.3 ft), but not into the water; becoming alert and moving, but not moving more than 1 m; and changing direction of current movement by individuals as behavioral criteria for take by Level B harassment.

(iii) A description of the implementation and effectiveness of the: monitoring and mitigation measures of the Incidental Harassment Authorization.

(b) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered to be the final report.

8. In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1–800–541–7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, NMFS shall be notified as well, but for immediate responses purposes, Sea World shall be contacted first.

Reporting Prohibited Take

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov* and the West Coast Regional Stranding Coordinator (*Justin.Greenman@noaa.gov*). The report must include the following information:

(a) Time, date, and location (latitude/longitude) of the incident; the type of activity involved; description of the circumstances during and leading up to the incident; status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume their activities until notified by NMFS via letter or email, or via telephone.

Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively

recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS West Coast Regional Office (1–866–767–6114) and/or by email to the West Coast Regional Stranding Coordinator (*Justin.Greenman@noaa.gov*). The report must include the same information identified in the Condition 8(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the City of San Diego to determine whether modifications in the activities are appropriate.

Reporting an Injured or Dead Marine Mammal Not Related to the Activities

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 to 4 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS West Coast Regional Office (1–866–767–6114) and/or by email to the West Coast Regional Stranding Coordinator (*Justin.Greenman@noaa.gov*), within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

9. A copy of this Authorization must be in the possession of all contractors and PSOs operating under the authority of this Incidental Harassment Authorization.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the preliminary determinations and notice of the proposed IHA for the City of San Diego's construction activities at the La Jolla Children's Pool Lifeguard Station. Please include with your comments any supporting data or literature citations to help inform our final decision on the City of San Diego's request for an MMPA authorization. Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 4, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–02893 Filed 2–10–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Public Availability of Fiscal Year 2013 Service Contract Inventory

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is publishing this notice to advise the public of the availability of CFTC's Fiscal Year (FY) 2013 Service Contract Inventory.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Service Contract Inventory should be directed to Sonda R. Owens in the Financial Management Branch, Procurement Section, at 202–418–5182 or *sowens@cftc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, 123 Stat. 3034, CFTC is notifying the public of the availability of the agency's FY 2013 Service Contract Inventory. CFTC has posted its inventory and a summary of the inventory on the agency's Web site at the following link: *http://www.cftc.gov/About/CFTCReports/index.htm.*

This inventory provides information on service contract actions over $25,000 that were made in FY 2013. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget, Office of Federal Procurement Policy (OFPP), and the revised guidance issued on November 8, 2011. The November 5, 2010, OFPP guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

Dated: February 5, 2014.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2014–02860 Filed 2–10–14; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0046]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consumer Focus Groups

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from persons who may voluntarily participate in consumer focus groups under OMB Control No. 3041–0136. The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by April 14, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0046, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted

without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2010–0046, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), authorizes the Commission to conduct studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

To help identify and evaluate product-related incidents, Commission staff invites and obtains direct feedback from consumers on issues related to product safety, such as recall effectiveness, product use, and perceptions regarding safety issues. By convening focus groups to provide information regarding use of a specific consumer product or class of consumer products, including recalled products, CPSC has collected valuable information. For example, Commission staff has used focus groups to assess consumers' behavior related to product recalls, pool and spa safety, the Consumer Product Safety Risk Management System, recreational off-road vehicle restraint systems, and cpsc.gov Web site redesign.

The information that the CPSC collects from future focus groups will help inform the Commission's identification and evaluation of consumer products and product use, by providing insight and information into consumer perceptions and usage patterns. In some cases, one-on-one interviews may be conducted as a more in-depth extension of a focus group or in place of a traditional focus group. This information may also assist the Commission in its efforts to support voluntary standards activities and help CPSC identify consumer safety issues requiring additional research. In addition, based on the information obtained, CPSC may be able to provide safety information to the public that is easier to read and understood by a wider range of consumers.

B. Burden Hours

1. Respondents

The CPSC seeks the proposed extension of approval of a collection of information for consumer focus groups that may be conducted by the CPSC over the next three years. Staff estimates that over the 3-year period of this request, the Commission will conduct up to 20 focus groups, with 10 persons each, and 10 one-on-one interviews for a variety of projects. The total hours of burden to the respondents are (an estimated 4 hours per person for each focus group × 200 participants) + (an estimated 30 minutes per person for each individual interview × 10 participants) = 1,100 hours (367 hours per year for 3 years). The total annual cost is estimated at 1,100 × $31.16 (U.S. Department of Labor, Employer Costs for Employee Compensation, September 2013) = $34,276 ($11,425.33 per year for 3 years).

2. Federal Government

The total cost of this collection to the federal government is estimated at approximately $140,000. This represents nine months of staff time annually. This sum includes anticipated travel costs expended for meeting with contractors and contracts for conducting focus groups or one-on-one interviews as well as salaries and benefits ($129,419). This estimate uses an annual total compensation of $119,238 (the equivalent of a GS–14 Step 5 employee), with an additional 30.9 percent added for benefits (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2013, Table 1, percentage of wages and salaries for all civilian management, professional, and related employees), for a total annual compensation of $172,559.

C. Requests for Comments

The Commission invites comments on the proposed collection of information, including:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–02901 Filed 2–10–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–61]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–61 with attached transmittal and policy justification.

Dated: February 6, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

FEB 04 2014

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-61, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $700 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–61

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

Major Defense Equipment*	$300 million
Other	$400 million
TOTAL	$700 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* commercially available FAA Air Traffic Control (ATC) Equipment Suite and Airfield Navigational Aids Suites installed at four bases (Tikrit, Al Basra, Al Kut, and Taji). The ATC Equipment Suite includes 4 ASR–11 Airport Surveillance Radars, 10 ATC Automation system with 10 controller consoles, 4 AutoTrac II Airfield Support and Navigation Suites, 2 Primary Search Radars and 2 Mono-pulse secondary surveillance radars. The Airfield Navigation Aids Suite includes 2 Very High Frequency Omni-directional Range (VORTAC) and 3 Instrument Landing Systems with Distance Measuring

Equipment, 2 Airfield Lighting Systems with Flush Mounted Lights for the runway and taxiways, Air Traffic Control Tower Equipment Suite. Also provided are site surveys, system integration, installation, testing, repair and return, facilities, warranties, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (QAZ, Amd #1)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 4 February 2014

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq—Air Traffic Control and Landing System

The Government of Iraq has requested a proposed sale of commercially available FAA Air Traffic Control (ATC) Equipment Suite and Airfield Navigational Aids Suites to be installed at four bases (Tikrit, Al Basra, Al Kut, and Taji). The ATC Equipment Suite includes 4 ASR–11 Airport Surveillance Radars, 10 ATC Automation system with 10 controller consoles, 4 AutoTrac II Airfield Support and Navigation Suites, 2 Primary Search Radars and 2 Mono-pulse secondary surveillance radars. The Airfield Navigation Aids Suite includes 2 Very High Frequency Omni-directional Range (VORTAC) and 3 Instrument Landing Systems with Distance Measuring Equipment, 2 Airfield Lighting Systems with Flush Mounted Lights for the runway and taxiways, Air Traffic Control Tower Equipment Suite. Also provided are site surveys, system integration, installation, testing, repair and return, facilities, warranties, spare and repair parts, support equipment, personnel training and training equipment, publications and technical documentation, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics and program support. The estimated cost is $700 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the United States.

The proposed sale will contribute to Iraq's continued efforts toward rebuilding its airfield systems at Tikrit, Al Basra, Al Kut, and Taji Air Bases for near-term basing of multiple aircraft. The renovations and upgrades to the airfields and systems will allow for greater ease in launch and recovery of aircraft and will enhance the overall sustainment to aircraft and affiliated systems. This equipment aids Iraq's continuing reconstruction effort and directly improves Iraq's ability to control its own airspace.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor is unknown and will be determined through a competitive process. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Iraq.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–02894 Filed 2–10–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0020]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Annual Review of the Manual for Courts-Martial, United States.

SUMMARY: Pursuant to Executive Order 12473—Manual for Courts-Martial, United States, 1984, and Department of Defense Directive 5500.17, Role and Responsibility of the Joint Service Committee (JSC) on Military Justice, the JSC is conducting an annual review of the Manual for Courts-Martial (MCM), United States.

The committee invites members of the public to suggest changes to the Manual for Courts-Martial. Please provide supporting rationale for any proposed changes.

DATES: Proposed changes must be received no later than 60 days from publication in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Major Daniel C. Mamber, Chief of Joint Services Policy and Legislation Section, Military Justice Division, AFLOA/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland, 20762, 240–612–4828.

Dated: February 6, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–02884 Filed 2–10–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, March 3, 2014, 9:00 a.m. to 5:00 p.m. and Tuesday, March 4, 2014, 8:30 a.m. to 12:00 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW.,

Washington, DC 20585–1290. Phone 301–903–9817; fax (301) 903–5051 or email: *david.thomassen@science.doe.gov.* The most current information concerning this meeting can be found on the Web site: *http://science.energy.gov/ber/berac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

- Report from the Office of Biological and Environmental Research.
- News from the Biological Systems Science and Climate and Environmental Sciences Divisions.
- Discussion of the Response to the Committee of Visitors Report.
- Environmental Molecular Sciences Laboratory (EMSL) Update.
- BERAC Discussion on Future Directions.
- Science Talks.
- New Business.
- Public Comment.

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://science.energy.gov/ber/berac/meetings/berac-minutes/.*

Issued in Washington, DC, on February 5, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–02905 Filed 2–10–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC14–7–000]

Commission Information Collection Activities (FERC–603); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–603, Critical Energy Infrastructure Information Request.

DATES: Comments on the collection of information are due April 14, 2014.

ADDRESSES: You may submit comments (identified by Docket No. IC14–7–000) by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–603, Critical Energy Infrastructure Information Request

OMB Control No.: 1902–0197

Type of Request: Three-year extension of the FERC–603 information collection requirements with no changes to the current reporting requirements.

Abstract: This collection is used by the Commission to implement procedures for gaining access to critical energy infrastructure information (CEII) that would not otherwise be available under the Freedom of Information Act (5 U.S.C. 552). On February, 21, 2003, the Commission issued Order No. 630 (66 FR 52917) to address the appropriate treatment of CEII in the aftermath of the September 11, 2001 terrorist attacks and to restrict unrestrained general access due to the ongoing terrorism threat. These steps enable the Commission to keep sensitive infrastructure information out of the public domain, decreasing the likelihood that such information could be used to plan or execute terrorist attacks. The process adopted in Order No. 630 is a more efficient alternative for handling requests for previously public documents than FOIA. The Commission has defined CEII to include information about "existing or proposed critical infrastructure that (i) relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, and (iv) does not simply give the location of the critical infrastructure. Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters. A person seeking access to CEII may file a request for that information by providing information about their identity and reason as to the need for the information. Through this process, the Commission is able to review the requester's need for the information against the sensitivity of the information. Compliance with these requirements is mandatory.

Type of Respondents: Persons seeking access to CEII.

Estimate of Annual Burden [1]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–604: CRITICAL ENERGY INFRASTRUCTURE INFORMATION REQUEST

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A)×(B)=(C)	Average burden hours per response (D)	Estimated total annual burden (C)×(D)
Persons seeking access to CEII	200	1	200	0.3	60

The total estimated annual cost burden per respondents is approximately $21 (0.3 hours * $70.50/hour [2] = $21.15). The total estimated annual cost burden is $4,230 [60 hours * $70.50/hour = $4,230).

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost 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 collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 5, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–02926 Filed 2–10–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–51–000]

KKR NR I Mineral Holdings II L.P., KKR NR I–A Mineral Holdings II L.P., KFN NR Mineral Holdings II L.P., Premier Natural Resources II, LLC; Notice of Application

Take notice that on January 23, 2014, KKR NR I Mineral Holdings, II L.P.; KKR NR I–A Mineral Holdings II L.P.; and KFN NR Mineral Holdings II L.P.; 9 West 57th Street, Suite 4200, New York, New York 10019; together with Premier Natural Resources II, LLC, 5727 S. Lewis Avenue, Tulsa, Oklahoma 74105 (collectively, the Applicants), filed an application in the above referenced docket pursuant to section 7(c) of the Natural Gas Act (NGA) requesting authorization to acquire, operate, and maintain a 5.917-mile, 16-inch diameter pipelines (Index 301 Pipeline), located in Simpson and Smith Counties, Mississippi which currently owned by Gulf South Pipeline, LP. The Applicants also request a Part 157, Subpart F blanket certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to W.J. Bielstein, Jr., 10777 Westheimer, Suite 1100, Houston, Texas 77042–3462; by telephone at (713) 260–9690, by facsimile at (713) 260–9689, or by email at *JBielstein@premiernatural resources.com.*

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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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

[2] $70.50/hour is the FERC staff average, including benefits. Staff assumes that respondents for this collection are in a similar wage category.

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 seven 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 *FERC OnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 25, 2014.

Dated: February 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–02924 Filed 2–10–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–57–000]

Freeport LNG Development, L.P.; Notice of Application

Take notice that on January 24, 2014, Freeport LNG Development, L.P. (Freeport LNG), filed an application pursuant to section 3(a) of the Natural Gas Act and Parts 153 and 380 of the Commission's Regulations, requesting authorization to integrate and operate on a permanent basis a boil-off gas refrigeration/chiller unit system (BOG) at its existing liquefied natural gas (LNG) facilities located on Quintana Island, Texas. 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, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Lisa M. Tonery, Fulbright & Jaworski LLP, 666 Fifth Avenue, New York, New York 10103. Telephone 212–318–3009, fax 212–318–3400, and email: *lisa.tonery@nortonrosefulbright.com.*

Freeport LNG states that the BOG which remains in place at its LNG terminal, was removed from service (decommissioned) at the end of October 2013. Once authorized, Freeport LNG intends to operate the BOG seasonally (during the summer and shoulder months) on a permanent basis. The BOG will assist the previously-installed BOG system. It also will augment Freeport LNG's ability to provide a needed source of LNG, and maintain safe and continuous cryogenic terminal operations. The project will not require additional construction and the BOG is located entirely within the existing footprint of the terminal.

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 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.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 25, 2014.

Dated: February 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–02925 Filed 2–10–14; 8:45 am]

BILLING CODE 6717–01–P

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: EC14–52–000.
Applicants: Lakeswind Power Partners, LLC, Union Bank of California Leasing, Inc.
Description: Section 203 Application of Lakeswind Power Partners, LLC, et al.
Filed Date: 2/3/14.
Accession Number: 20140203–5247.
Comments Due: 5 p.m. ET 2/24/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–309–006.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–02–03_Net Zero-Attachment X Compliance Filing to be effective 1/1/2012.
Filed Date: 2/3/14.
Accession Number: 20140203–5164.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–485–001.
Applicants: Tucson Electric Power Company.
Description: TEP Order No. 784 Correction Filing to be effective 1/27/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5166.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–486–001.
Applicants: UNS Electric, Inc.
Description: UNSE Order No. 784 Correction Filing to be effective 1/27/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5174.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–839–000.
Applicants: Frederickson Power L.P.
Description: Supplement to December 26, 2013 Frederickson Power L.P. tariff filing.
Filed Date: 1/16/14.
Accession Number: 20140116–5092.
Comments Due: 5 p.m. ET 2/6/14.

Docket Numbers: ER14–1040–000.
Applicants: Lumens Energy Supply LLC.
Description: Market-Based Rate Tariff to be effective 2/13/2014.
Filed Date: 1/17/14.
Accession Number: 20140117–5316.
Comments Due: 5 p.m. ET 2/7/14.

Docket Numbers: ER14–1175–000.
Applicants: Southwest Power Pool, Inc.
Description: 2646 Kansas Municipal Energy Agency NITSA NOA to be effective 1/1/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5248.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1248–000.
Applicants: Southwestern Electric Power Company.
Description: SWEPCO-Hope PSA Amendment SPP Integrated Market to be effective 3/1/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5158.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–1249–000.
Applicants: Southwestern Electric Power Company.
Description: SWEPCO-Bentonville PSA Amendment SPP Integrated Market to be effective 3/1/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5159.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–1250–000.
Applicants: Southwestern Electric Power Company.
Description: SWEPCO-Prescott PSA Amendment SPP Integrated Market to be effective 3/1/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5162.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–1251–000.
Applicants: Peetz Logan Interconnect, LLC.
Description: Peetz Logan Interconnect, LLC Compliance Filing Per Order Nos. 764 and 764–A to be effective 4/4/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5175.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–1252–000.
Applicants: Sagebrush, a California partnership.
Description: Sagebrush, a California partnership Comp Filing Per Order Nos. 764 and 764–A to be effective 4/4/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5178.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–1253–000.
Applicants: Sky River LLC.
Description: Sky River LLC Compliance Filing Per Order Nos. 764 and 764–A to be effective 4/4/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5182.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–1254–000.
Applicants: Liberty Utilities (Granite State Electric) Corp.
Description: Notice of Succession Borderline Sales Tariff to be effective 2/4/2014.
Filed Date: 2/3/14.
Accession Number: 20140203–5204.
Comments Due: 5 p.m. ET 2/24/14.

Docket Numbers: ER14–1255–000.
Applicants: Emera Maine.
Description: Filing in Compliance with Order No. 784 to be effective 1/1/2014.
Filed Date: 2/4/14.
Accession Number: 20140204–5017.
Comments Due: 5 p.m. ET 2/25/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–4–000.
Applicants: Enel Green Power North America, Inc.
Description: Quarterly Land Acquisition Report of Enel Green Power North America, Inc. subsidiaries.
Filed Date: 2/4/14.
Accession Number: 20140204–5037.
Comments Due: 5 p.m. ET 2/25/14.

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: February 4, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02911 Filed 2–10–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at the National Association of Regulatory Utility Commissioners 2014 Winter Committee Meeting

The Federal Energy Regulatory Commission (FERC or Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meeting:

FERC/National Association of Regulatory Utility Commissioners (NARUC), Sunday Morning Collaborative: ''Resource Adequacy A Problem that Needs Fixing or a Solution in Search of a Problem?'' February 9, 2014, Renaissance Washington Hotel, 999 Ninth Street NW., Washington, DC 20001

Further information may be found at *http://winter.narucmeetings.org/program.cfm*

The discussion at this meeting, which is open to the public, may address matters at issue in the following Commission proceedings:

Docket No. AD14–3–000, Coordination Across the Midcontinent Independent System Operator, Inc./PJM Interconnection, LLC Seam,
Docket No. ER11–4081, Midwest Independent Transmission System Operator, Inc.
Docket No. ER14–801, Midcontinent Independent System Operator, Inc.
Docket No. EL13–76, AmerenEnergy Resources Generating Company v. Midcontinent Independent System Operator, Inc.
Docket No. ER13–1962, Midcontinent Independent System Operator, Inc.
Docket No. ER13–1963, Midcontinent Independent System Operator, Inc.
Docket No. ER14–292, Midcontinent Independent System Operator, Inc.
Docket No. ER14–294, Midcontinent Independent System Operator, Inc.
Docket No. ER12–2302, Midwest Independent Transmission System Operator, Inc.
Docket No. ER13–1695, Midcontinent Independent System Operator, Inc.
Docket No. ER13–1699, Midcontinent Independent System Operator, Inc.
Docket No. ER14–1210, Midcontinent Independent System Operator, Inc.
Docket No. ER14–1212, Midcontinent Independent System Operator, Inc.
Docket No. ER14–1242, Midcontinent Independent System Operator, Inc.
Docket No. ER14–1243, Midcontinent Independent System Operator, Inc.
Docket No. AD13–5–000, Flexible and Local Resources Needed for Reliability in the California Wholesale Electric Market

Dated: February 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–02927 Filed 2–10–14; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: BRANTLEY BROADCAST ASSOCIATES, LLC, Station WEZZ, Facility ID 40900, BP–20131209YDT, From MONROEVILLE, AL, To BRANTLEY, AL; FULLER BROADCASTING INTERNATIONAL, LLC, Station WSKP, Facility ID 58731, BPH–20131226ADD, From LEDYARD, CT, To BRADFORD, RI; KESS–AM LICENSE CORP., Station KFLC, Facility ID 34298, BP–20140106DQR, From FORT WORTH, TX, To BENBROOK, TX; L–L LICENSEE, LLC, Station WHXT, Facility ID 50522, BPH-20131120AYO, From ORANGEBURG, SC, To SWANSEA, SC; NEW LIFE EVANGELISTIC CENTER, INC., Station WINU, Facility ID 73996, BP–20131218DTZ, From SHELBYVILLE, IL, To ASSUMPTION, IL; NORTHWEST INDY RADIO, Station KCFL, Facility ID 174954, BMPED–20140113AAB, From WESTPORT, WA, To HOQUIAM, WA; ROBERT E. LEE, Station NEW, Facility ID 191551, BMPH–20140110ABG, From ROBERT LEE, TX, To ROTAN, TX; SSR COMMUNICATIONS, INC., Station KIMW, Facility ID 191575, BMPH–20130913ACG, From HAYNESVILLE, LA, To HEFLIN, LA; WAY BROADCASTING LICENSEE, LLC, Station WZHF, Facility ID 73306, BP–20131223AFI, From ARLINGTON, VA, To CAPITOL HEIGHTS, MD.

DATES: The agency must receive comments on or before April 14, 2014.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2014–02966 Filed 2–10–14; 8:45 am]

BILLING CODE 6712–01–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 March 7, 2014.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *McGregor Bancshares, Inc.,* McGregor, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of McGregor, McGregor, Texas.

Board of Governors of the Federal Reserve System, February 6, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–02906 Filed 2–10–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for the information collection requirements contained in the Rule Governing Pre-Sale Availability of Written Warranty Terms. That clearance expires on February 28, 2014.

DATES: Comments must be received by March 13, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Svetlana Gans, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H–286, 600 Pennsylvania Ave. NW., Washington, DC 20580, (202) 326–3708.

SUPPLEMENTARY INFORMATION:

Title: Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule or Rule), 16 CFR 702.

OMB Control Number: 3084–0112.

Type of Review: Extension of a currently approved collection.

Abstract: The Pre-Sale Availability Rule is one of three rules [1] that the FTC implemented pursuant to requirements of the Magnuson Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act).[2] The Pre-Sale Availability Rule requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than $15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, online sales, mail order, or door to door.

On November 14, 2013, the Commission sought comment on the Rule's information collection requirements.[3] The Commission did not receive any comments.

As required by OMB regulations, 5 CFR 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Manufacturers and retailers of consumer products.

Estimated Annual Hours Burden: 2,446,610 hours (131,002 hours for manufacturers + 2,315,608 hours for retailers).

- Manufacturers account for approximately 131,002 hours ((581 large manufacturers × 33.6 hours) + (13,935 small manufacturers × 8 hours)).
- Retailers account for approximately 2,315,608 hours ((6,892 large retailers × 20.8 burden hours) + (452,553 small retailers × 4.8 burden hours)).

Estimated Annual Cost Burden: $51,379,000 (rounded to nearest thousand) (which is derived from $29,359,320 for sales associates + $22,019,490 for clerical workers).[4]

- Sales Associates: (0.5) (2,446,610 hours) ($24/hour) = $29,359,320.
- Clerical Workers: (0.5) (2,446,610 hours) ($18/hour) = $22,019,490.

Total Annual Capital or Other Non-labor Costs: De minimis.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 13, 2014. Write ''Pre-Sale Availability Rule: Paperwork Comment, FTC File No. P044403'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/presaleavailabilitypra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Pre-Sale Availability Rule: Paperwork Comment, FTC File No. P044403'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 13, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments

[1] The other two rules relate to the information that must appear in a written warranty on a consumer product costing more than $15 if a warranty is offered and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] *See* 78 FR 68446 (60-Day **Federal Register** Notice).

[4] The wage rates used in this Notice reflect recent data from the Bureau of Labor Statistics, Occupational Employment and Wages (May 2012), available at *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–02895 Filed 2–10–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Announcement of the Third 2015 Dietary Guidelines Advisory Committee Meeting

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health; and U.S. Department of Agriculture, Food, Nutrition and Consumer Services and Research, Education, and Economics.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act (FACA), the U.S. Department of Health and Human Services (HHS), in collaboration with the U.S. Department of Agriculture (USDA), is hereby giving notice that a meeting of the 2015 Dietary Guidelines Advisory Committee (DGAC) will be held and will be open to the public.

DATES: This meeting will be held on March 14, 2014, from 8:00 a.m.–4:45 p.m. E.S.T.

ADDRESSES: The meeting will be accessible by webcast on the Internet only; there will be no attendance in-person.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer (DFO), 2015 DGAC, Richard D. Olson, M.D., M.P.H.; Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone: (240) 453–8280; Fax: (240) 453–8281; Alternate DFO, 2015 DGAC, Kellie (O'Connell) Casavale, Ph.D., R.D., Nutrition Advisor; Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone: (240) 453–8280; Fax: (240) 453–8281; Lead USDA Co-Executive Secretary, Colette I. Rihane, M.S., R.D., Director, Nutrition Guidance and Analysis Division, Center for Nutrition Policy and Promotion, USDA; 3101 Park Center Drive, Room 1034; Alexandria, VA 22302; Telephone: (703) 305–7600; Fax: (703) 305–3300; and/or USDA Co-Executive Secretary, Shanthy A. Bowman, Ph.D., Nutritionist, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, USDA; 10300 Baltimore Avenue, BARC-West Bldg 005, Room 125; Beltsville, MD 20705–2350; Telephone: (301) 504–0619. Additional information about the 2015 DGAC and this meeting is available on the Internet at *www.DietaryGuidelines.gov*.

SUPPLEMENTARY INFORMATION: Under Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III) the Secretaries of Health and Human Services (HHS) and Agriculture (USDA) are directed to issue at least every five years a report titled *Dietary Guidelines for Americans.* The law instructs that this publication shall contain nutritional and dietary information and guidelines for the general public, shall be based on the preponderance of scientific and medical knowledge current at the time of publication, and shall be promoted by each federal agency in carrying out any federal food, nutrition, or health program. The *Dietary Guidelines for Americans* was issued voluntarily by HHS and USDA in 1980, 1985, and 1990; the 1995 edition was the first statutorily mandated report, followed by subsequent editions at appropriate intervals. To assist with satisfying the mandate, a discretionary federal advisory committee is established every five years to provide independent, science-based advice and recommendations. The DGAC consists of a panel of experts who were selected from the public/private sector. Individuals who were selected to serve on the Committee have current scientific knowledge in the field of human nutrition and chronic disease.

Appointed Committee Members: The Secretaries of HHS and USDA appointed 15 individuals to serve as members of the 2015 DGAC in May 2013. The Committee currently has 14 members; it became necessary for one of the appointed members to resign from his position on the 2015 DGAC. Information on the DGAC membership is available at *www.DietaryGuidelines.gov*.

Authority: The 2015 DGAC is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended.

Committee's Task: The work of the DGAC is solely advisory in nature and time-limited. The Committee is tasked with developing recommendations based on the preponderance of current scientific and medical knowledge using a systematic review approach. The DGAC will examine the current *Dietary Guidelines for Americans,* take into consideration new scientific evidence and current resource documents, and develop a report that is to be given to the Secretaries of HHS and USDA. The report will outline science-based recommendations and rationales which will serve as the basis for developing the eighth edition of the *Dietary Guidelines for Americans.* It is planned for the Committee to hold approximately five public meetings to review and discuss recommendations. This will be the third meeting of the 2015 DGAC. Additional meeting dates, times, locations, and other relevant information will be announced at least 15 days in advance of each meeting via **Federal Register** notice. As stipulated in the charter, the Committee will be terminated after delivery of its final report to the Secretaries of HHS and USDA or two years from the date the charter was filed, whichever comes first.

Purpose of the Meeting: In accordance with FACA and to promote transparency of the process, deliberations of the Committee will occur in a public forum. At this meeting, the Committee will continue its deliberations.

Meeting Agenda: The meeting agenda may include (a) topic-specific presentations from guest experts identified by the Committee, and will include (b) review of Committee work since the last public meeting, and (c) plans for future Committee work.

Meeting Registration: The meeting is open to the public. The meeting will be accessible by webcast only. Registration is required for web viewing and is expected to open on February 4, 2014. To register, please go to *www.DietaryGuidelines.gov* and click on the link for ''Meeting Registration.'' To register by phone, please call National Capitol Contracting, Laura Walters at (703) 243–9696 by 5:00 p.m. E.S.T., March 6, 2014. Registration must include name, affiliation, and phone number or email address. After registering, individuals will receive webcast access information via email.

Written Public Comments: Written comments from the public will continue to be accepted throughout the Committee's deliberative process. Written public comments can be submitted and/or viewed at *www.DietaryGuidelines.gov* using the ''Submit Comments'' and ''Read Comments'' links, respectively. Written comments received by March 3, 2014 will ensure transmission to the Committee prior to this meeting. As the Committee continues its work, it may request public comments on specific topics; these requests and any instructions for submitting requested

comments will be posted on the Web site.

Meeting Documents: Documents pertaining to Committee deliberations, including meeting agendas, summaries, and webcasts will be available on *www.DietaryGuidelines.gov* under ''Meetings.'' Meeting information will continue to be accessible online, at the NIH Library, and upon request at the Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852: Telephone (240) 453–8280; Fax: (240) 453–8281.

Dated: February 6, 2014.

Don Wright,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services.

Dated: January 24, 2014.

Jackie Haven,

Acting Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: January 27, 2014.

Caird E. Rexroad, Jr.,

Acting Administrator, Agricultural Research Service, U.S. Department of Agriculture.

[FR Doc. 2014–02939 Filed 2–10–14; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-14–0607]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to LeRoy Richardson, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Violent Death Reporting System (NVDRS) (0920–0607, Expiration 12/31/2015)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Violence is an important public health problem. In the United States, suicide and homicide are the second and third leading causes of death, respectively, in the 1–34 year old age group. Unfortunately, public health agencies do not know much more about the problem than the numbers and the sex, race, and age of the victims, or information obtainable from the standard death certificate. Death certificates, however, carry no information about key facts necessary for prevention such as the relationship of the victim and suspect and the circumstances of the deaths. Furthermore, death certificates are typically available 20 months after the completion of a single calendar year. Official publications of national violent death rates, e.g. those in Morbidity and Mortality Weekly Report, rarely use data that is less than two years old.

Local and Federal criminal justice agencies such as the Federal Bureau of Investigation (FBI) provide slightly more information about homicides, but they do not routinely collect standardized data about suicides, which are in fact much more common than homicides. The FBI's Supplemental Homicide Report (SHRs) does collect basic information about the victim-suspect relationship and circumstances related to the homicide. SHRs do not link violent deaths that are part of one incident such as homicide-suicides. It also is a voluntary system in which some 10–20 percent of police departments nationwide do not participate.

The FBI's National Incident Based Reporting System (NIBRS) provides slightly more information than SHRs, but it covers less of the country than SHRs. NIBRS also only provides data regarding homicides. Also, the Bureau of Justice Statistics Reports does provide data that is less than two years old.

CDC requests Office of Management and Budget (OMB) approval in order to revise its state-based surveillance system for violent deaths that will provide more detailed and timely information.

The surveillance system captures case record information held by medical examiners/coroners, vital statistics (i.e., death certificates), and law enforcement, including crime labs. Data is collected by each state in the system and entered into a web system administered by CDC. Information is collected from these records about the characteristics of the victims and suspects, the circumstances of the deaths, and the weapons involved. States use standardized data elements and software designed by CDC. Ultimately, this information will guide states in designing, targeting, and evaluating programs that reduce multiple forms of violence.

Neither victim's families nor suspects are contacted to collect this information; it all comes from existing records and is collected by state health department staff or their subcontractors.

The number of hours per death required for the public agencies working with NVDRS states to retrieve and then refile their records is estimated to be 0.5 hours per death. Moving forward, we will no longer include state abstractors' time spent abstracting data in our estimates of public burden for NVDRS because state abstractors are funded by CDC to do this work. This significantly reduces the estimated public burden associated with NVDRS.

The president has submitted plans to fund the expansion of the state-based surveillance system to collect information in all 50 U.S. states, the District of Columbia, and U.S. territories. This revision will allow 32 new state health departments, the health department of the District of Columbia, and 8 territorial governments to be added to the currently funded 18 state health departments, resulting in a total of 59 states and territories to be included in the state-based surveillance system.

Violent deaths include all homicides, suicides, legal interventions, deaths from undetermined causes, and unintentional firearm deaths. The average state will experience approximately 1,000 such deaths each year.

Moving forward, we will no longer include state abstractors' time spent abstracting data in our estimates of public burden for NVDRS because state abstractors are funded by CDC to do this work. This significantly reduces the

estimated public burden associated with NVDRS.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avenue burden per response (in hrs.)	Total burden (in hrs.)
Public Agencies	Retrieving and refile records	59	1,000	0.5	29,500
Total					29,500

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–02917 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0026]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Report of Verified Case of Tuberculosis (RVCT), (OMB No. 0920–0026) exp. 05/31/2014—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, an estimated 10 to 15 million people are infected with *Mycobacterium tuberculosis* and about 10% of these persons will develop tuberculosis (TB) disease at some point in their lives. The purpose of this project is to continue ongoing national tuberculosis surveillance using the standardized Report of Verified Case of Tuberculosis (RVCT). Data collected using the RVCT help state and federal infectious disease officials to assess changes in the diagnosis and treatment of TB, monitor trends in TB epidemiology and outbreaks, and develop strategies to meet the national goal of TB elimination.

CDC conducts and maintains the national TB surveillance system (NTSS) pursuant to the provisions of Section 301 (a) of the Public Service Act [42 U.S.C. 241] and Section 306 of the Public Service Act [42 U.S.C. 241 (a)]. NTSS has been maintained by the U.S. Public Health Service and CDC through the cooperation of the states since 1953. Data are collected by 60 reporting areas (the 50 states, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean).

CDC publishes an annual report using RVCT data to summarize national TB statistics and also periodically conducts special analyses for publication to further describe and interpret national TB data. These data assist in public health planning, evaluation, and resource allocation. Reporting areas also review and analyze their RVCT data to monitor local TB trends, evaluate program success, and focus resources to eliminate TB. No other Federal agency collects this type of national TB data.

The total estimated burden hours are approximately 5,810 burden hours, an estimated decrease of 919 hours from 2011. This decrease is due to having fewer TB cases in the United States as we continue progress towards TB elimination. There is no cost to respondents except for their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Types of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Local, state, and territorial health departments	60	166	35/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–02900 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0923]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the CDC National Tobacco Prevention and Control Public Education Campaign (OMB No. 0920–0923, exp. 4/30/2014)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests OMB approval to conduct a multi-wave longitudinal study of smokers and non-smokers in the U.S. Information collection will consist of an initial wave 1 survey and a series of follow-up surveys (4 follow-ups among smokers, 3 follow-ups among nonsmokers) to assess long-term, lasting impacts of CDC's National Tobacco Education Campaign. Phase 3 of the campaign is expected to launch in February 2014.

The timeframe for information collection correlates with the timing and duration of the campaign. In order to ensure accurate measurement of campaign awareness after all media have been aired, CDC anticipates fielding the first survey from March to June 2014. Participants who complete the wave 1 survey will be surveyed again in a follow-up survey approximately 3 months later. This will facilitate analysis of relationships between individuals' exposure to the campaign and changes in outcomes of interest. Subsequent follow-up surveys (3 for smokers, 2 for nonsmokers) will occur on a quarterly basis after the first two surveys are completed. One of the primary purposes of the subsequent follow-up surveys will be to track longer-term cigarette abstinence among smokers who initially report quitting as a result of the campaign.

This study will rely on Web surveys to be self-administered on computers in the respondent's home or in another convenient location. Information will be collected about smokers' and non-smokers' awareness of and exposure to specific campaign advertisements, knowledge, attitudes, beliefs related to smoking and secondhand smoke, and other marketing exposure. The surveys will also measure behaviors related to smoking cessation (among the smokers in the sample) and behaviors related to non-smokers' encouragement of smokers to quit smoking, recommendations of cessation services, and attitudes about other tobacco and nicotine products.

Follow-up surveys may include additional survey items on other relevant topics, including cigars, noncombustible tobacco products, and other emerging trends in tobacco use. It is important to evaluate CDC's campaign in a context that assesses the dynamic nature of tobacco product marketing and uptake of various tobacco products, particularly since these may affect successful cessation rates.

The sample for this survey will originate from two sources: (1) A new online longitudinal cohort of smokers and nonsmokers, sampled randomly from postal mailing addresses in the U.S. (address-based sample, or ABS); and (2) the existing GfK KnowledgePanel, an established long-term online panel of U.S. adults. The new ABS-sourced longitudinal cohort will consist of smokers and nonsmokers who have not previously participated in any established online panels. The new cohort will be recruited by GfK, utilizing identical recruitment methods that are used in the recruitment of KnowledgePanel. The GfK KnowledgePanel will be used in combination with the new ABS-sourced cohort to support larger sample sizes that will allow for more in-depth subgroup analysis, which is a key objective of the CDC. All online surveys, regardless of sample source, will be conducted via the GfK KnowledgePanel Web portal for self-administered surveys. Respondents may participate in English or Spanish.

OMB approval is requested for two years. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 8,777.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Population	Screening and Consent Process	13,074	1	5/60
Adults, ages 18–54 in the U.S.	Smoker Wave 1 Survey	4,720	1	30/60
	Smoker Follow-Up Survey (Wave 2)	1,982	1	30/60
	Smoker Follow-Up Survey (Wave 3)	1,982	1	30/60
	Smoker Follow-Up Survey (Wave 4)	1,982	1	30/60
	Smoker Follow-Up Survey (Wave 5)	1,982	1	30/60
	Nonsmoker Wave 1 Survey	1,400	1	30/60
	Nonsmoker Follow-Up Survey (Wave 2)	441	1	30/60
	Nonsmoker Follow-Up Survey (Wave 3)	442	1	30/60
	Nonsmoker Follow-Up Survey (Wave 4)	442	1	30/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–02937 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), has been renewed for a 2-year period extending through February 1, 2016.

Contact Person for More Information: Carmen Villar, M.S.W., Designated Federal Officer, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., Mailstop D14, Atlanta, Georgia 30333, Telephone 404–639–7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–02881 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns NIOSH Member Conflict Review, PA 07–318, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1:00 p.m.–4:00 p.m., March 13, 2014 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''NIOSH Member Conflict Review, PA 07–318.

Contact Person for More Information: Nina Turner, Ph.D., Scientific Review Officer, 1095 Willowdale Road, Morgantown, WV 26506, Telephone: (304) 285–5976.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–02856 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Reduction of Malaria in U.S. Residents Returning from Overseas Travel to Malaria-Endemic Countries, FOA CK14–004, Initial Review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12:00 p.m.–4:00 p.m., March 18, 2014 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Reduction of Malaria in U.S. Residents Returning from Overseas Travel to Malaria-Endemic Countries, FOA CK14–004''.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–02857 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 11:00 a.m.–4:10 p.m., March 4, 2014.

Place: This meeting is accessible by Web conference. Toll-free +1 (800) 857–9642, Participant Code: 4131105

For Participants:

URL: *https://www.mymeetings.com/nc/join/*
Conference number: PW3964772
Audience passcode: 4131105

Participants can join the event directly at: *https://www.mymeetings.com/nc/join.php?i=PW3964772&p=4131105&t=c*

Status: Open to the public limited only by web conference. Participation by web conference is limited by the number of 100 ports available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include the following topics: (1) U.S. Prevention Services Task Force and Medicaid coverage for tuberculosis (TB); (2) Update on CDC Global TB issues; (3) Updates from Workgroups; and (4) other tuberculosis-related issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Centers for Disease

Control and Prevention, 1600 Clifton Road NE., M/S E–07, Atlanta, Georgia 30333, telephone (404) 639–8317; Email: *zkr7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2014–02859 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates:

8:30 a.m.–4:30 p.m., March 5, 2014
8:30 a.m.–12:00 p.m., March 6, 2014

Place: CDC, 1600 Clifton Road NE., Tom Harkin Global Communications Center, Building 19, Auditorium B, Atlanta, Georgia 30333. This meeting will also be Webcast, please see information below.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendment (CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods and the electronic transmission of laboratory information.

Matters To Be Discussed: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and discussions will include the CMS implementation of Individualized Quality Control Plan (IQCP) as a new CLIA quality control option based on risk management for laboratories performing nonwaived testing; CDC's strategic priority for strengthening public health and health care collaborations; and quality improvement tools for managing laboratory testing in ambulatory settings.

Agenda items are subject to change as priorities dictate.

Webcast: The meeting will also be Webcast. Persons interested in viewing the Webcast can access information at: *http://wwwn.cdc.gov/cliac/default.aspx.*

Online Registration Required: All people attending the CLIAC meeting in-person are required to register for the meeting online at least 5 business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at *http://wwwn.cdc.gov/cliac/default.aspx* by scrolling down and clicking the appropriate link under ''Meeting Registration'' (either U.S. Citizen Registration or Non-U.S. Citizen Registration) and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than February 26, 2014 for U.S. registrants and February 19, 2014 for international registrants.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. *Oral Comments:* In general, each individual or group requesting to make oral comments will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, speakers should notify the contact person below at least one week prior to the meeting date. *Written Comments:* For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below, and will be included in the meeting's Summary Report.

Availability of Meeting Materials: To support the green initiatives of the federal government, the CLIAC meeting materials will be made available to the Committee and the public in electronic format (PDF) on the internet instead of by printed copy. Check the CLIAC Web site on the day of the meeting for materials. **Note:** If using a mobile device to access the materials, please verify that the device's browser is able to download the files from the CDC's Web site before the meeting. *http://wwwn.cdc.gov/cliac/cliac_meeting_all_documents.aspx* Alternatively, the files can be downloaded to a computer and then emailed to the portable device. An internet connection, power source and limited hard copies may be available at the meeting location, but cannot be guaranteed.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Programs, Standards, and Services, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30329–4018; telephone (404) 498–2741; or via email at *NAnderson@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–02858 Filed 2–10–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0129]

Application of Physiologically-Based Pharmacokinetic Modeling To Support Dose Selection; Notice of Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing a public workshop entitled ''Application of Physiologically-Based Pharmacokinetic (PBPK) Modeling to Support Dose Selection.'' The purpose of the workshop is to obtain input on scientific approaches for the conduct and assessment of physiologically-based pharmacokinetic (PBPK) modeling within the framework of drug development and regulatory decisionmaking. The input from the workshop may be used to refine FDA's thinking on the various applications of PBPK. Preliminary elements of a draft concept paper will be presented to facilitate discussion at this public workshop.

DATES: The workshop will be held on March 10, 2014, from 8:30 a.m. to 4:30 p.m. Individuals who wish to attend the

workshop must register by February 24, 2014. Please submit either electronic or written comments by April 10, 2014, to receive consideration.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 2, Rm. 2047, Silver Spring, MD 20993. Participants must enter through Building 1 and undergo security screening. For parking and security information, please visit *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*.

Please submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify all comments with the corresponding docket number found in brackets in the heading of this notice. A transcript of the workshop will be available for review at the Division of Dockets Management and at *http://www.regulations.gov* approximately 30 days after the public workshop (see section VI of **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Ping Zhao, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3182, Silver Spring, MD 20993, 301–796–3774, FAX: 301–847–8720, email: *ping.zhao@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the President signed into law the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144). Title I of FDASIA reauthorizes the Prescription Drug User Fee Act (PDUFA) and provides FDA with the user fee resources necessary to maintain an efficient review process for human drug and biological products. The reauthorization of PDUFA includes performance goals and procedures for the Agency that represent FDA's commitments during fiscal years 2013–2017. These commitments are fully described in the document entitled ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017'' (''PDUFA Goals Letter''), which is available at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf*. Section IX of the PDUFA Goals Letter, entitled ''Enhancing Regulatory Science and Expediting Drug Development,'' includes provisions to promote innovation through enhanced communication between FDA and sponsors during drug development. As part of this enhanced communication, FDA made a commitment to hold a public workshop to: (1) Engage stakeholders in a discussion of current and emerging scientific approaches and applications for the conduct of PBPK modeling and simulations and (2) to facilitate stakeholder input regarding the utility of PBPK during drug development and regulatory review. The public workshop announced by this document will fulfill this commitment.

PBPK modeling is a mathematical modeling technique for predicting drug behavior in humans. A PBPK model takes information about a drug's physical, chemical, and other properties, as well as information about processes in the body, and turns them into mathematical equations to predict what will happen when a patient takes the medication. Consequently, PBPK models may be a useful platform in risk assessment during drug development.

II. Purpose and Scope of the Workshop

The objectives of the workshop are to:

1. Share and discuss best practices in the use of PBPK to inform dose selection in specific patient populations, such as patients with renal or hepatic impairment, pediatric patients, elderly patients, and patients with genetic variation,
2. Discuss the current state of knowledge and share current FDA experience regarding important criteria for evaluating the adequacy of PBPK models for intended uses, as well as criteria for considering modeling results when making regulatory decisions,
3. Obtain input on specific issues identified by FDA on the conduct of PBPK analysis.

Since the 1970s PBPK modeling and simulation has been routinely used in toxicology to assess the risk of environmental toxins that cannot be safely studied in humans. In the past decade, PBPK models have increasingly been applied to complex drug development issues that cannot be evaluated in a clinical trial or to issues that can be reliably assessed *in silico,* thereby minimizing the need for costly clinical trials. These types of applications of PBPK are submitted to FDA for regulatory review. As a result, FDA is looking to adopt a rigorous approach to the review of PBPK submissions and the conduct of *de novo* PBPK analysis to support regulatory review. FDA also wishes to be transparent regarding its evidentiary standards and how it weighs the evidence of a PBPK simulation in arriving at a decision or regulatory action.

The public workshop will focus on the use of PBPK models for assessing the effect of various intrinsic and extrinsic factors in order to inform dose optimization. FDA acknowledges, however, that PBPK can be used to support decision making through the entire life cycle of drug development, including preclinical and clinical evaluations.

The input from the workshop may be used to refine FDA's thinking on use of PBPK in determining proper dosage and may lead to the development of a draft guidance for industry. There is currently no FDA guidance on this topic. Specifically, this guidance would describe FDA's view of criteria considered important when evaluating the strength and quality of evidence provided by a PBPK analysis.

FDA will also be preparing a concept paper that will propose best practices and principles for the use of PBPK modeling in drug development and regulatory review. Preliminary elements of this document will be presented at the public workshop by FDA to elicit comments and facilitate discussion. The paper will incorporate the workshop outcomes, then the public will be invited to comment through a public docket.

III. Scope of Public Input Requested

FDA seeks input on a range of topics related to the conduct of PBPK modeling and simulation by pharmaceutical industries and by FDA and on the interpretation and use of simulations when evaluating risk in the regulation of pharmaceutical products. These include:

1. Predictive performance of PBPK models for a specific aim
2. Identification of knowledge gaps in the specific application of PBPK simulation to replace a clinical trial:

a. Criteria for the adequacy of a PBPK model for a specific aim
b. Biological plausibility and predictive performance
c. Model validation and statistical considerations

3. Presentation of simulations in approved product labeling (labeling):

a. When should PBPK simulations be included in drug labeling?
b. What is the best format for presenting PBPK simulations in different sections of the labeling?
c. How should uncertainty in simulations be presented in the labeling?

IV. Attendance and Registration

The FDA Conference Center at the White Oak Campus is a Federal facility with security screening and limited seating. Individuals who wish to attend the public workshop must register on or before February 24, 2014, by visiting *https://www.surveymonkey.com/s/MW5WZDW* and contacting Ping Zhao (see **FOR FURTHER INFORMATION CONTACT**). Early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Onsite registration on the day of the workshop will be based on space availability.

During the workshop, time will be designated for questions and answers throughout the day and for general comments and questions from the audience following the panel discussions.

In this **Federal Register** document, FDA has included specific issues that will be addressed by the panel. If you wish to address one or more of these issues in your presentation, please indicate this at the time you register so that FDA can consider that in organizing the presentations. FDA will do its best to accommodate requests to speak and will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. An agenda will be available approximately 2 weeks before the workshop at *http://www.fda.gov/Drugs/NewsEvents/ucm132703.htm* (select this workshop meeting from the events list).

If you need special accommodations because of a disability, please contact Ping Zhao (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

A live webcast of this workshop will be viewable at *https://collaboration.fda.gov/pbpk/* on the day of the workshop. A video record of the workshop will be available at the same web address for 1 year.

V. Comments

Regardless of attendance at the public workshop, interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this notice. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

VI. Transcripts

Transcripts of the workshop will be available for review at the Division of Dockets Management (see **ADDRESSES**) and at *http://www.regulations.gov* approximately 30 days after the workshop. A transcript will also be made available in either hard copy or on CD–ROM upon submission of a Freedom of Information request. Send requests to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: February 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02883 Filed 2–10–14; 8:45 am]

BILLING CODE 4160–01–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: Children's Hospitals Graduate Medical Education Payment Program. OMB No. 0915–0247 Revision.

Abstract: The Children's Hospitals Graduate Medical Education (CHGME) Payment Program was enacted by Public Law 106–129 and reauthorized by Public Law 109–307 to provide federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs, and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.

The Centers for Medicare and Medicaid Services (CMS) issued a final rule in the **Federal Register** regarding Sections 5503, 5504, 5505, and 5506 of the Affordable Care Act of 2010, Public Law 111–148 on Wednesday, November 24, 2010. This final rule included policy changes on counting resident time in non-provider settings, counting resident time for didactic training, and the re-distribution of resident caps. It required modification of the data collection forms within the CHGME Payment Program application. The necessary modifications were made and received OMB clearance on June 30, 2012.

On September 30, 2013, CMS published revised forms on their Web site, requiring additional modifications of the data collection forms in the CHGME Payment Program application. The CHGME Payment Program application forms have been adjusted to accommodate the most recent CMS policy changes. These changes require OMB approval.

Need and Proposed Use of the Information: Data are collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that

requires the reporting of discharges, beds, and case mix index information from participating children's hospitals.

Hospitals will also be requested to submit data on the number of full-time equivalent (FTE) residents trained during the federal fiscal year to participate in the reconciliation payment process. Auditors will be requested to submit data on the number of FTE residents trained by the hospitals in an FTE resident assessment summary. An assessment of the hospital data ensures that appropriate CMS regulations and CHGME program guidelines are followed in determining which residents are eligible to be claimed for funding. The audit results impact final payments made by the CHGME Payment Program to all eligible children's hospitals.

Likely Respondents: Hospitals applying for and receiving CHGME funds and fiscal intermediaries auditing data submitted by the hospitals receiving CHGME funds.

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 name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application Cover Letter (Initial)	60	1	60	0.33	19.8
Application Cover Letter (Reconciliation)	60	1	60	0.33	19.8
HRSA 99 (Initial)	60	1	60	0.33	19.8
HRSA 99 (Reconciliation)	60	1	60	0.33	19.8
HRSA 99–1 (Initial)	60	1	60	26.50	1,590.0
HRSA 99–1 (Reconciliation)	60	1	60	6.50	390.0
HRSA 99–1 (Supplemental) (FTE Resident Assessment)	30	1	30	3.67	110.1
HRSA 99–2 (Initial)	60	1	60	11.33	679.8
HRSA 99–2 (Reconciliation)	60	1	60	3.67	220.2
HRSA 99–4 (Reconciliation)	60	1	60	12.50	750.0
HRSA 99–5 (Initial)	60	1	60	0.33	19.8
HRSA 99–5 (Reconciliation)	60	1	60	0.33	19.8
CFO Form Letter (Initial)	60	1	60	0.33	19.8
CFO Form Letter (Reconciliation)	60	1	60	0.33	19.8
FTE Resident Assessment Cover Letter (FTE Resident Assessment)	30	1	30	0.33	9.9
Conversation Record (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit C (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit F (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit N (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit O(1) (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit O(2) (FTE Resident Assessment)	30	1	30	26.5	795.0
Exhibit P (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit P(2) (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit S (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit T (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit T(1) (FTE Resident Assessment)	30	1	30	3.67	110.1
Exhibit 1 (FTE Resident Assessment)	30	1	30	0.33	9.9
Exhibit 2 (Initial, Reconciliation and FTE Resident Assessment)	90	1	90	0.33	29.7
Exhibit 3 (Initial, Reconciliation and FTE Resident Assessment)	90	1	90	0.33	29.7
Exhibit 4 (Initial, Reconciliation and FTE Resident Assessment)	90	1	90	0.33	29.7
Total	90		90		5,962.8

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: February 4, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–02897 Filed 2–10–14; 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: Delta States Rural Development Network Grant Program (Delta States Grant Program)

OMB No. 0915–xxxx—New.

Abstract: The Delta States Rural Development Network Grant Program supports projects that demonstrate evidence based and/or promising approaches around cardiovascular disease, diabetes, or obesity in order to improve health status in rural communities throughout the Delta Region. Key features of programs are collaboration, adoption of an evidence-based approach, demonstration of health outcomes, program replicability, and sustainability.

Need and Proposed Use of the Information

For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Office of Rural Health Policy (OPRHP), including: (a) Access to care; (b) the underinsured and uninsured; (c) workforce recruitment and retention; (d) sustainability; (e) health information technology; (f) network development; and (g) health related clinical measures. Several measures will be used for this program. These measures will speak to ORHP's progress toward meeting the goals set.

Likely Respondents: Delta States Rural Development Network Grant Program award recipients.

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 name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Delta States Rural Development Network Grant Program Performance Improvement Measurement System measures	12	1	12	6	72
Total	12	1	12	6	72

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: January 31, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–02908 Filed 2–10–14; 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: Rural Health Information Technology (HIT) Workforce Program.

OMB No. 0915–xxxx—New.

Abstract: The purpose of the Rural Health Information Technology (HIT) Workforce Program is to support formal rural health networks that focus on activities relating to the recruitment, education, training, and retention of HIT specialists. This program will also provide support to rural health networks that can leverage and enhance existing HIT training materials to develop formal training programs, which will provide instructional opportunities to current health care staff, local displaced workers, rural residents, veterans, and other potential students. These formal training programs will result in the development of a cadre of HIT workers who can help rural hospitals and clinics implement and maintain systems, such as electronic health records (EHR), telehealth, home monitoring, and mobile health technology; and meet EHR meaningful use standards.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103–62). These measures cover the principal topic areas of interest to the Office of Rural Health Policy, including: (a) Access to care; (b) the underinsured and uninsured; (c) workforce recruitment and retention; (d) sustainability; (e) health information technology; (f) network development; and (g) health related clinical measures. Several measures will be used for this program. These measures will speak to the Office's progress toward meeting the goals set.

Likely Respondents: Rural Health Information Technology Workforce Program award recipients.

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 name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Information Technology Workforce Program Performance Measures	15	1	15	3.6	54
Total	15	1	15	3.6	54

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: January 31, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–02898 Filed 2–10–14; 8:45 am]

BILLING CODE 4165–15–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: Questionnaire and Data Collection Testing, Evaluation, and Research for the Health Resources and Services Administration.

OMB No.: 0915–xxxx—New.

Abstract: The purpose of collections under this generic clearance is to obtain formative information from respondents to develop new questions, questionnaires, and tools and to identify problems in instruments currently in use. This clearance request is limited to formative research activities emphasizing data collection, toolkit development, and estimation procedures and reports for internal decision-making and development purposes; and does not extend to the collection of data for public release or policy formation.

It is anticipated that these studies will rely heavily on qualitative techniques to meet their objective. In general, these activities are not designed to yield results that meet generally accepted standards of statistical rigor; rather, these activities are designed to obtain valuable formative information to develop more effective and efficient data collection tools that will yield more accurate results and decrease non-response.

HRSA conducts cognitive interviews, focus groups, usability tests, field tests/pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation, as well as more basic research on response errors in surveys.HRSA staff use various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing (CAPI), Computer Assisted Self-Interviewing (CASI), Audio Computer-Assisted Self-Interviewing (ACASI), and web-based questionnaires.

Professionally recognized procedures will be followed in each information collection activity to ensure high quality data. Examples of these procedures are likely to include:

- A certain percent of telephone interviews will be monitored by supervisory staff of a certain percent of telephone interviews;
- Cognitive interviewing techniques will be conducted, including think-aloud techniques and debriefings;
- Data-entry from mail or paper-and-pencil surveys will be computerized through scannable forms or checked through double-key entry;
- Observers will monitor focus groups, and focus group proceedings will be recorded; and
- Data submitted through on-line surveys will be subjected to statistical validation techniques to ensure accuracy (such as disallowing out-of-range values).

Each request under this generic clearance will specify the procedures to be used. Participation will be fully voluntary, and non-participation will not affect eligibility for, or receipt of, future HRSA health services research activities, grant awards, recruitment, or participation. Specific testing and evaluation procedures will be described when we notify OMB about each new request. Consent procedures will be customized for each information collection activity, but will include assurances of confidentiality and the legislative authority for the activity. If the encounter is to be recorded, the respondent's permission to record will be obtained before beginning the interview.

Recruitment—Respondents will be recruited by means of advertisements in public venues or through techniques that replicate prospective data collection activities that are the focus of the project. For instance, a survey on physician communication, designed to be administered following an office visit, might be pretested using the same procedure. Each submission to OMB will specify the specific recruitment procedure to be used.

Screening—When screening is required (e.g., quota sampling), the screening will be as brief as possible, and the screening questionnaire will be provided as part of the submission to OMB.

Collection methods—The particular information collection methods used will vary, but may include the following:

- Individual in-depth interviews—In-depth interviews will commonly be used to ensure that the meaning of a questionnaire or strategy is understood by the respondent. When in-depth interviewing is used, the interview guide will be provided to OMB for review.
- Focus groups—Focus groups will be used to obtain insights into beliefs and understandings of the target audience early in the development of a questionnaire or tool. When focus groups are used, the focus group discussion guide will be provided to OMB for review.
- Expert/Gatekeeper review of tools—In some instances, tools designed for patients may be reviewed in-depth by medical providers or other gatekeepers to provide feedback on the acceptability and usability of a particular tool. This would usually be in addition to pretesting of the tool by the actual patient or other user.
- Record abstractions—On occasion, the development of a tool or other information collection requires review and interaction with records rather than individuals.
- ''Dress rehearsal'' of a specific protocol—In some instances, the proposed pretesting will constitute a walkthrough of the intended data collection procedure. In these instances, the request will mirror what is expected to occur for the larger scale data collection.

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

Type of information collection	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Mail/email [1]	10,000	1	10,000	0.5	5,000
Telephone	10,000	1	10,000	0.5	5,000
Web-based	10,000	1	10,000	0.5	5,000
Focus Groups	10,000	1	10,000	2.0	20,000
In-person	10,000	1	10,000	1.0	10,000
Automated [2]	10,000	1	10,000	1.0	10,000
Cognitive Interviewing	30,000	1	30,000	2.0	60,000
Total	90,000		90,000		115,000

[1] May include telephone non-response follow-up in which case the burden will not change.
[2] May include testing of database software, CAPI software, or other automated technologies.

Dated: February 5, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–02896 Filed 2–10–14; 8:45 am]

BILLING CODE 4165–15–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: Nurse Faculty Loan Program (NFLP)—Program Specific Data Form OMB No. 0915–xxxx—NEW.

Abstract: This clearance request is for approval of the new Nurse Faculty Loan Program (NFLP) Program Specific Data Form. The form was previously approved under OMB Approval No: 0915–0061, Expiration date: June 30, 2013. The data form was discontinued under the old approval number.

Need and Proposed Use of the Information: The NFLP Program Specific Data Form is included as an electronic attachment with the required application materials. The data provided in the form are essential for the formula-based criteria used to determine the award amount to the applicant schools. Approval of the new NFLP Program Specific Data Form will facilitate our current effort to address the specific program goal of capturing data to efficiently generate the formula-based award. The electronic data collection capability will streamline the application submission process, enable an efficient award determination process, and serve as a data repository to facilitate reporting on the use of funds and analysis of program outcomes.

Likely Respondents: Likely Respondents are NFLP applicants.

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
NFLP-Program Specific Data From	150	1	150	8	1,200
Total Burden	150	1	150	8	1,200

Dated: January 31, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–02912 Filed 2–10–14; 8:45 am]

BILLING CODE 4165–15–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: Ryan White HIV/AIDS Program: Program Allocation and Expenditure Forms.

OMB No.: 0915–0318—Extension.

Abstract: HRSA's HIV/AIDS Bureau (HAB) administers the Ryan White HIV/AIDS Program authorized under Title XXVI of the Public Health Service Act as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009. The purpose of the legislation is to provide emergency assistance to localities that are disproportionately affected by the Human Immunodeficiency Virus (HIV) epidemic and to make financial assistance available for the development, organization, coordination, and operation of more effective and cost-efficient systems for the delivery of essential services to persons with HIV disease. It also provides grants to states for the delivery of services to HIV positive individuals and their families. Under the law, grantees receiving funds under Parts A, B, and C must spend at least 75 percent of funds on ''core medical services.'' The proposed forms will collect information from grantees documenting the use of funds to ensure compliance with the Act.

Need and Proposed Use of the Information: The Ryan White HIV/AIDS Program Allocation and Expenditure Reports will enable HRSA's HIV/AIDS Bureau to track spending requirements for each program as outlined in the legislation. Grantees funded under Parts A, B, C, and D of the Ryan White HIV/AIDS Program (codified under Title XXVI of the Public Health Service Act) would be required to report financial data to HRSA at the beginning and end of their grant cycle.

All Parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds. Accurate allocation and expenditure records of the grantees receiving Ryan White HIV/AIDS Program funding are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

The forms would require grantees to report on how funds are allocated and spent on core and non-core services and on various program components, such as administration, planning, evaluation, and quality management. The two forms are identical in the types of information that are collected. However, the first report would track the allocation of the award at the beginning of the grant cycle and the second report would track actual expenditures (including carryover dollars) at the end of the grant cycle.

The primary purposes of these forms are to (1) provide information on the number of grant dollars spent on various services and program components, and (2) oversee compliance with the intent of Congressional appropriations in a timely manner. In addition to meeting the goal of accountability to the Congress, clients, advocacy groups, and the general public, information collected on these reports is critical for HRSA, state and local grantees, and individual providers to evaluate the effectiveness of these programs.

Likely Respondents: All Ryan White HIV/AIDS Program Grantees (Part A, Part B, Part C, and Part D).

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 name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Part A—Allocations and Expenditures Report	52	2	104	1.5	156
Part B—Allocations and Expenditures Report	55	2	110	12	1,320
Part C—Allocations and Expenditures Report	351	2	702	2.5	1,755
Part D—Allocations and Expenditures Report	115	2	230	4.5	1,035
Total	573		1,146		4,266

Dated: January 31, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–02913 Filed 2–10–14; 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: Small Health Care Provider Quality Improvement Program OMB No. 0915–XXXX—NEW

Abstract: This program is authorized by Title III, Public Health Service Act, Section 330A(g) (42 U.S.C. 254c(g)), as amended by Section 201, Public Law 107–251, and Section 4, Public Law 110–355. This authority directs the Office of Rural Health Policy (ORHP) to support grants that expand access to, coordinate, contain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of health care networks in rural and frontier areas and regions. Across these various programs, the authority allows HRSA to provide funds to rural and frontier communities to support the direct delivery of health care and related services, to expand existing services, or to enhance health service delivery through education, promotion, and prevention programs.

The purpose of the Small Health Care Provider Quality Improvement Grant (Rural Quality) Program is to provide support to rural primary care providers for implementation of quality improvement activities. The goal of the program is to promote the development of an evidence-based culture and delivery of coordinated care in the primary care setting. Additional objectives of the program include: improved health outcomes for patients; enhanced chronic disease management; and better engagement of patients and their caregivers. Organizations participating in the program are required to utilize an evidence-based quality improvement model, perform tests of change focused on improvement, and use health information technology (HIT) to collect and report data. HIT may include an electronic patient registry (EPR) or an electronic health record (EHR), and is a critical component for improving quality and patient outcomes. With HIT it is possible to generate timely and meaningful data, which helps providers track and plan care.

Need and Proposed Use of the Information: ORHP collects this information to quantify the impact of grant funding on access to health care, quality of services, and improvement of health outcomes. ORHP uses the data for program improvement and grantees use the data for performance tracking.

Likely Respondents: The respondents will be grantees of the Small Health Care Provider Quality Improvement Program.

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 name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Small Health Care Provider Quality Improvement Grant Performance Improvement Measurement System (PIMS) Measures Form	30	1	30	12	360
Total	30	1	30	12	360

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: January 31, 2014.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2014–02910 Filed 2–10–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program, List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on December 1, 2013, through December 31, 2013. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: January 27, 2014.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Dorothy Archibong, Staten Island, New York, Court of Federal Claims No: 13–0944V.
2. Robert T. Mitchell, Colorado Springs, Colorado, Court of Federal Claims No: 13–0948V.
3. Merle Kaplan, Chicago, Illinois, Court of Federal Claims No: 13–0950V.
4. Robert Ross, Mt. Pleasant, North Carolina, Court of Federal Claims No: 13–0955V.
5. Leilah Al-Uffi on behalf of Raja Bowlds, Phoenix, Arizona, Court of Federal Claims No: 13–0956V.
6. Donna Baldwin, Bedford, Texas, Court of Federal Claims No: 13–0957V.
7. Giovanni Eustor, New York, New York, Court of Federal Claims No: 13–0958V.
8. Essam Helmy, San Francisco, California, Court of Federal Claims No: 13–0959V.
9. Eric Waterman and Taree Waterman on behalf of A.T.W., Deceased, Las Vegas, Nevada, Court of Federal Claims No: 13–0960V.
10. James King, Nashville, Tennessee, Court of Federal Claims No: 13–0962V.
11. Lawr-Alea Walton on behalf of Autumn Walton, Manassas, Virginia, Court of Federal Claims No: 13–0965V.

12 Benjamin Follen, Dedham, Massachusetts, Court of Federal Claims No: 13–0967V.

13. Josita Walker on behalf of Jabari A Walker, Albany, New York, Court of Federal Claims No: 13–0968V.
14. Tracy Caps, Warren, Michigan, Court of Federal Claims No: 13–0973V.
15. Angel Y. Davis, Springfield, Illinois, Court of Federal Claims No: 13–0974V.
16. Michelle Wilton on behalf of Troy Wilton, Huntington Beach, California, Court of Federal Claims No: 13–0976V.
17. Theresa Hudson on behalf of Jackie Hudson, Deceased, Monmouth,

Maine, Court of Federal Claims No: 13–0977V.

18. James Chapman, Tampa, Florida, Court of Federal Claims No: 13–0979V.

19. Charlene Macomber, Salt Lake City, Utah, Court of Federal Claims No: 13–0980V.

20. Janet Powell, Victoria, Texas, Court of Federal Claims No: 13–0983V.

21. Lorraine Lupio, Garwood, New Jersey, Court of Federal Claims No: 13–0984V.

22. Ching-Ping Chih, Miami, Florida, Court of Federal Claims No: 13–0985V.

23. Virginia Merrihew, Kinnelon, New Jersey, Court of Federal Claims No: 13–0986V.

24. Hugo D. Gutierrez, Green Bay, Wisconsin, Court of Federal Claims No: 13–0987V.

25. Kathy Kovalcik, Freeport, Pennsylvania, Court of Federal Claims No: 13–0991V.

26. Donald Memmo, Somers Point, New Jersey, Court of Federal Claims No: 13–0992V.

27. Julie Suliman, Edison, New Jersey, Court of Federal Claims No: 13–0993V.

28. Marvin C. Setness, Henderson, Nevada, Court of Federal Claims No: 13–0996V.

29. Sheila Graffeo on behalf of Jessica Graffeo, Deceased, Lafayette, Louisiana, Court of Federal Claims No: 13–0997V.

30. Michael Anderson, Lincoln, Nebraska, Court of Federal Claims No: 13–0998V.

31. Victor York, Boston, Massachusetts, Court of Federal Claims No: 13–0999V.

32. David Herren and Theresa Herren on behalf of A.H., Louisville, Kentucky, Court of Federal Claims No: 13–1000V.

33. Christina Moore on behalf of T.B., Deceased, Seymour, Tennessee, Court of Federal Claims No: 13–1001V.

34. Dillon Copenhaver and Amanda Buckman on behalf of Nicholas Copenhaver, Deceased, Shelbina, Missouri, Court of Federal Claims No: 13–1002V.

35. Ariel Ahram, Oklahoma City, Oklahoma, Court of Federal Claims No: 13–1004V.

36. Sarah Williamson, Council Bluffs, Iowa, Court of Federal Claims No: 13–1005V.

37. Raithe Pace, Lansdale, Pennsylvania, Court of Federal Claims No: 13–1007V.

38. Dana M. Brasher, Rockford, Illinois, Court of Federal Claims No: 13–1017V.

39. Krista Schultz, Richmond, Indiana, Court of Federal Claims No: 13–1018V.

40. Joseph Corona, Lake Jackson, Texas, Court of Federal Claims No: 13–1019V.

41. Evelyn Eiche, Galveston, Texas, Court of Federal Claims No: 13–1020V.

42. Michael Dorkoski and Lisa Whispell on behalf of M.D., Mt. Carmel Township, Pennsylvania, Court of Federal Claims No: 13–1022V.

43. April Noon on behalf of Eric J. Noon, New York, New York, Court of Federal Claims No: 13–1029V.

[FR Doc. 2014–02907 Filed 2–10–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Kidney Interagency Coordinating Committee Meeting

SUMMARY: The Kidney Interagency Coordinating Committee (KICC) will hold a meeting on March 7, 2014 about patient safety in chronic kidney disease (CKD). The meeting is open to the public.

DATES: The meeting will be held on March 7, 2014, 9 a.m.to 12 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held at the Natcher Conference Center (Building 45), on the NIH Campus at 8600 Rockville Pike, Bethesda, MD 20894.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, contact Dr. Andrew S. Narva, Executive Secretary of the Kidney Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A26, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–594–8864; FAX: 301–480–0243; email: *nkdep@info.niddk.nih.gov.*

SUPPLEMENTARY INFORMATION: The KICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), comprises members of the Department of Health and Human Services and other federal agencies that support kidney-related activities, facilitates cooperation, communication, and collaboration on kidney disease among government entities. KICC meetings, held twice a year, provide an opportunity for Committee members to learn about and discuss current and future kidney programs in KICC member organizations and to identify opportunities for collaboration. The March 7, 2014 KICC meeting will focus on patient safety in CKD.

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future KICC meetings should send a request to *nkdep@info.niddk.nih.gov.*

Dated: Feburary 4, 2014.

Camille M. Hoover,

Executive Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2014–02947 Filed 2–10–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N023; FXIA16710900000–145–FF09A30000]

Endangered Species; Marine Mammals; 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, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) prohibit 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 March 13, 2014. We must receive

requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by March 13, 2014.

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.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *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. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Indianapolis Zoo, Indianapolis, IN; PRT–19344B

The applicant requests a permit to import one captive bred Sumatran orangutan (*Pongo abelii*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: University of California at Berkeley, Berkeley, CA; PRT–23339B

The applicant requests a permit to import biological samples of mantled howler (*Alouatta palliate*) from the Soberania Nature Reserve in the Republic of Panama for the purpose of scientific research.

Applicant: Delaware Museum of Natural History, Wilmington, DE; PRT–184718

The applicant requests a permit to export and re-import nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Edward Stehmeyer, Isle of Palms, SC; PRT–25430B

Applicant: Randall Peters, Hubertus, WI; PRT–26544B

Applicant: Ramon Gonzalez, San Antonio, TX; PRT–26184B

B. Endangered Marine Mammals and Marine Mammals

Applicant: ABR, Inc. Environmental Research and Services, Fairbanks, AK; PRT–187053

The applicant requests renewal of a permit to conduct on-shore, boat-based, and aerial surveys of northern sea otters (*Enhydra lutris kenyoni*) at various locations in the coastal waters of Alaska for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2014–02843 Filed 2–10–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14X LLUT980300–L11500000–PH0000–24–1A]

Utah Resource Advisory Council Meeting/Conference Call

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting/conference call.

SUMMARY: In accordance with the Federal Land Policy and Management

Act, the Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) will host a meeting/conference call.

DATES: The BLM-Utah RAC will host a meeting/conference call on Friday, Feb. 28, 2014, from 8:30 a.m.–Noon, MST.

ADDRESSES: Those attending in person should meet at the BLM Utah State Office, 440 West 200 South, Salt Lake City, Utah, in the Monument Conference Room on the fifth floor.

FOR FURTHER INFORMATION CONTACT: If you wish to listen to the teleconference, orally present material during the teleconference, or submit written material for the RAC to consider during the teleconference, please notify Sherry Foot, Special Programs Coordinator, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4195; or, *sfoot@blm.gov* by close of business, Friday, Feb. 21, 2014.

SUPPLEMENTARY INFORMATION: The Utah RAC will elect officers for calendar year 2014. The Utah RAC is tasked to provide collective input on the Utah Greater Sage-Grouse Draft Land Use Plan Amendment and Environmental Impact Statement and to submit a draft comment letter to the BLM-Utah. A 30-minute public comment period will take place from 9:00–9:30 a.m. The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

The conference call will be recorded for purposes of minute-taking. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

Authority: 43 CFR 1784.4–1.

Jenna Whitlock,

Associate State Director.

[FR Doc. 2014–02886 Filed 2–10–14; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000 L1310000.BX0000 14XL1109AF]

Notice of Filing of Plat of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: The plat of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: This plat will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *mmontoya@blm.gov*, for assistance. 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.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, in two sheets, representing the dependent resurvey and survey in Township 13 North, Range 4 East, of the New Mexico Principal Meridian, accepted January 31, 2014, for Group 1154 NM.

This plat will be scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication.

If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plat is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Stephen W. Beyerlein,

Branch Chief, Cadastral Survey.

[FR Doc. 2014–02885 Filed 2–10–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Notice of Tribal Consultations

AGENCY: National Indian Gaming Commission.

ACTION: Notice of tribal consultations.

SUMMARY: The purpose of this document is to publish the schedule for government-to-government consultation on the National Environmental Policy Act (NEPA), and the NIGC's efforts to remain current with gaming technology.

FOR FURTHER INFORMATION CONTACT: Christinia Thomas, Deputy Chief of Staff at (202) 632–7003

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission (NIGC or Commission) under the Indian Gaming Regulatory Act (IGRA) to regulate gaming on Indian lands. In accordance with the NIGC's tribal consultation policy, the Commission will engage in consultation with tribal governments on the following topics.

The National Environmental Policy Act

In December of 2009, the NIGC published a draft NEPA manual in the **Federal Register** and requested comments. Some of the comments received questioned whether the approval of a management contract actually triggered a NEPA review. Further, the comments suggested that the NIGC should either conclude that NEPA does not apply or it should adopt a categorical exclusion for the approval of management contracts. Therefore the Commission is seeking comments on what level of environmental review, if any, is required before the Chairman can or should approve a management contract.

Technology

The Commission realizes that constant technologic advances are not only changing the face of Indian gaming, but also necessitate that the NIGC continue to adapt to meet the regulatory needs of the industry. As tribal gaming evolves, the NIGC wants to continue to play a relevant role in tribal gaming and ensure that it can meet the demands of new regulatory issues in a timely manner.

Consultation generally

Executive Order 13175 entitled, ''Consultation and Coordination with Indian Tribal Governments'' provides for the NIGC to engage in meaningful consultation with Tribal governments prior to taking an action that has tribal

implications. Through this consultation, the NIGC hopes to identify areas that need to be addressed to ensure that the Agency meets new regulatory challenges as technology develops. The Commission recognizes the necessity of engaging experts from the industry as it considers its options. To ensure that any decisions made benefit and protect the entire gaming industry, all points of view must be considered and decisions informed by the industry the NIGC regulates.

In compliance with Executive Order 13175, the NIGC will hold four consultations at the locations listed below. Every attempt was made to hold a consultation in each region and to coordinate with other established meetings when establishing this consultation schedule. Please RSVP to *consultation.rsvp@nigc.gov.*

Consultation Schedule

The Commission will be conducting government-to-government consultations with Tribes on this proposed rule at the following dates and locations:

- March 20, 2014 in Las Vegas, NV
- April 2, 2014 in Prior Lake, MN
- May 8, 2014 in Biloxi, MS
- May 14, 2014 in San Diego, CA

One or more of the consultations will include an option for Tribes to participate by telephone. For additional information on consultation locations and times, please refer to the consultation page on the NIGC Web site at *www.nigc.gov.*

Jonodev Chaudhuri,

Acting Chairman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2014–02862 Filed 2–10–14; 8:45 am]

BILLING CODE 7565–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–543]

Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy; Addition of Second Day for Public Hearing

AGENCY: United States International Trade Commission.

ACTION: Notice of scheduling a second day for public hearing.

DATES: February 6, 2014.

SUMMARY: To accommodate the larger than expected number of requests to appear at the public hearing in this investigation scheduled to begin on February 13, 2014, the Commission will begin the hearing a day earlier, at 1 p.m. on February 12, 2014, and will continue the hearing at 9:30 a.m. on February 13, 2014 (as previously scheduled). The hearing will be held at the United States International Trade Commission Building, 500 E Street SW., Washington, DC, as previously announced. Commission staff is working with persons who filed requests to appear as to the day on which they appear. Requests to appear were due by January 21, 2014. All other dates and deadlines, including with respect to the filing of pre- and post-hearing briefs and statements and written submissions, remain the same as in the Commission's notice of investigation and hearing in this investigation, which was published in the **Federal Register** on September 5, 2013 (78 FR 54677).

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Bill Powers (202–708–5405 or *william.powers@usitc.gov*) or Deputy Project Leader Renee Berry (202–205–3498 or *renee.berry@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). 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.

By order of the Commission.

Issued: February 6, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–02915 Filed 2–10–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *Gasco Energy, Inc.* v. *Environmental Protection Agency and United States* v. *Gasco Energy, Inc.,* Civil Action No. 1:12-cv-1658–MSK–BNB, was lodged with the United States District Court for the District of Colorado on February 4, 2014.

This proposed Consent Decree concerns a complaint filed by Gasco Energy, Inc. (''Gasco'') under the Administrative Procedure Act, 5 U.S.C. 706, that seeks judicial review of an administrative order EPA issued to Gasco under Section 309 of the Clean Water Act, 33 U.S.C. 1319, and counterclaims filed by the United States and Intervenor Southern Utah Wilderness Alliance against Gasco under Sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against Gasco for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring Gasco to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Alan D. Greenberg, United States Department of Justice, Environmental Defense Section, 999 18th Street, Suite 370—South Terrace, Denver, CO 80202 and refer to *United States* v. *Gasco Energy, Inc.,* DJ # 90–5–1–1–19544.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, Room A105, 901 19th Street, Denver, CO 80294. In addition, the proposed Consent Decree may be examined electronically at *http://*

www.justice.gov/enrd/Consent_Decrees.html.

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2014–02861 Filed 2–10–14; 8:45 am]

BILLING CODE 4410–CW–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on a Proposed Revision of OMB Circular No. A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities''

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) request comments on proposed revisions to Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'' (hereinafter, Circular A–119, or, the Circular) in light of changes that have taken place in the world of regulation, standards, and conformity assessment since the Circular was last revised in 1998. These materials are available at *http://www.whitehouse.gov/omb/inforeg_infopoltech.*

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113; hereinafter known as the NTTAA) codified pre-existing policies on the development and use of voluntary consensus standards in Circular A–119, established additional reporting requirements for agencies, and authorized the National Institute of Standards and Technology (NIST) to coordinate conformity assessment activities. In response, OMB in 1998 issued a revised version of Circular A–119, which remains the current version.

In this notice, OMB is seeking public comment on proposed revisions to the Circular. These proposed revisions reflect the experience gained by U. S. agencies in implementing the Circular since 1998; domestic and international developments in regulatory, standards, and conformity assessment policy; concluding and implementing U.S. trade agreements; and comments received in response to OMB's March 2012 Request for Information on whether and how to supplement Circular A–119.

The proposed revision to Circular A–119 includes the following elements:

Preference for voluntary consensus standards. The revised Circular would maintain a strong preference for using voluntary consensus standards in Federal regulation and procurement. It would also acknowledge, however, that there may be some standards not developed using a consensus-driven process that are in use in the market—particularly in the information technology space—and that may be relevant (and necessary) in meeting agency missions and priorities.

Guidance on use of standards and participation in standards development. The revised Circular would provide more detailed guidance on how Federal representatives should participate in standards development activities. It would also strengthen the role of agency Standards Executives, encourage better internal coordination and training on standards, and update the provisions on how the U.S. Government manages and reports on the development and use of standards. The Circular would also provide criteria for agencies to consider when examining whether a standard meets agency needs and should be adopted.

Guidance on conformity assessment. The revised Circular would encourage agencies to consider international conformity assessment schemes and private sector conformity assessment activities in lieu of conformity assessment activities or schemes developed or carried out by the government, and set out criteria for agencies to consider when they are selecting or designing an appropriate conformity assessment procedure.

Enhanced transparency. The proposed revisions would provide guidance to agencies on how they should discuss implementation of the Circular in their rulemakings and guidance documents; encourage agencies to alert the public when considering whether to participate in standards development activities; and set out factors for agencies to consider when incorporating standards by reference in regulation.

Burden reduction. The proposed revisions would require agencies to utilize the retrospective review mechanism set out in Executive Orders 13563 and 13610 to implement the Circular, including ensuring that standards incorporated by reference in regulation are updated on a timely basis. The revisions also encourage agencies to work together to reference the same version of a standard in regulation and procurements and coordinate on conformity assessment requirements, where feasible.

International considerations. The proposed revisions incorporate references to trade-related statutory obligations on standards-related measures and direct Federal agencies to consult with USTR on how to comply with international obligations with regard to standards and conformity assessment. They provide guidance on how to identify such obligations, direct agencies to take into account their obligations under Executive Order 13609 when they engage in standards and conformity assessment activities, and encourage greater coordination with respect to the Government's formulation of global strategies on standards, regulation, and international trade.

DATES: Comments are requested on the proposed revision to Circular A–119 no later than May 12, 2014.

ADDRESSES: All comments should be submitted via *http://www.regulations.gov* or faxed to 202–395–5167. Please submit comments only and include your name, company name (if any), and cite ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities'' in all correspondence. All comments received will be posted, without change or redaction, to *www.regulations.gov,* so commenters should not include information they do not wish to be posted (e.g., personal or confidential business information).

FOR FURTHER INFORMATION CONTACT Jasmeet Seehra, Office of Management and Budget, Office of Information and Regulatory Affairs, at *jseehra@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: In Section 12(d) of the NTTAA, Congress stated that Federal agencies ''shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities,'' except when an agency determines that such use ''is inconsistent with applicable law or otherwise impractical.'' (Section 12(d), as amended, is found as a ''note'' to 15 U.S.C. 272. Congress amended Section 12(d) in 2001, in Section 1115 of Pub. L. 107–107, to include paragraph (4) on ''expenses of government personnel.'')

In response to the enactment of the NTTAA, OMB prepared a proposed revision to Circular A–119 and issued a **Federal Register** notice seeking public comment on the proposal (see 61 FR 68312 (December 27, 1996)). Following OMB's consideration of the comments, OMB issued a final revision of the

Circular in 1998 63 FR 8546 (February 19, 1998) which can be found on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_a119/.*

The policies in the Circular are intended to maximize the reliance by agencies on voluntary consensus standards and reduce to a minimum agency reliance on standards other than voluntary consensus standards, including reliance on government-unique standards. The Circular also provides guidance for agencies participating in the work of bodies that develop voluntary consensus standards and describes procedures for satisfying the NTTAA's agency-reporting requirements. In addition, consistent with section 12(b) of the NTTAA, the Circular directs the Secretary of Commerce to issue guidance to agencies in order to coordinate conformity assessment activities. The NIST conformity assessment guidelines, which were issued in 2000, are available at *http://gsi.nist.gov/global/docs/FR_FedGuidanceCA.pdf.*

OMB's proposed revisions are meant to provide more detailed guidance to agencies to take into account agency experience under the current Circular in several areas including the Administration's current work in Open Government, developments in regulatory policy and international trade, and changes in technology.

Howard Shelanski,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2014–02891 Filed 2–10–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30908; File No. 812–14211]

The Gabelli Dividend & Income Trust, et al.; Notice of Application

February 6, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') requesting an exemption from section 17(a) of the Act, and for an order under section 17(d) of the Act and rule 17d–1 thereunder permitting certain joint transactions.

Applicants: The Gabelli Dividend & Income Trust (''Dividend Trust''), The Gabelli Global Small and Mid Cap Value Trust (''Global Trust'') (each, a ''Fund'' and together, the ''Funds'') and Gabelli Funds, LLC (the ''Adviser'').

SUMMARY: Summary of Application: Applicants seek an order to permit Dividend Trust to transfer a segment of its assets to Global Trust, a newly formed, wholly-owned subsidiary that is a registered closed-end investment company, and to distribute the shares of Global Trust common stock to the holders of Dividend Trust's common stock.

DATES: Filing Dates: The application was filed on September 11, 2013 and amended on January 28, 2014.

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 Commission's Secretary 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 February 27, 2014 and should be accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESS: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090; Applicants: Richard T. Prins, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

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 an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Dividend Trust, a Delaware statutory trust, is registered under the Act as a diversified closed-end management investment company. Dividend Trust seeks to provide a high level of total return on its assets with an emphasis on dividends and income. Under normal market conditions, Dividend Trust invests at least 80% of its assets in dividend-paying securities or other income-producing securities, and at least 50% of its assets in dividend-paying equity securities. Dividend Trust has a non-fundamental policy that limits investment in securities of non-United States issuers to 35% of its total assets.

2. Global Trust was organized as a Delaware statutory trust on August 19, 2013 and is wholly-owned by Dividend Trust. Global Trust filed a notification of registration on Form N–8A on September 11, 2013 to register under the Act as a diversified closed-end management investment company. Global Trust filed a registration statement under the Securities Act of 1933 (the ''1933 Act'') on Form N–14 on September 11, 2013 (the ''Proxy Statement/Prospectus'') and filed a registration statement on Form N–2 on December 10, 2013. Application will be made to list Global Trust's common shares for trading on the New York Stock Exchange. Global Trust seeks to provide long-term capital growth. Under normal market conditions, Global Trust will invest at least 40% of its total assets in the equity securities of companies located outside the United States and in at least three countries. Unlike Dividend Trust, Global Trust may invest without limitation in the equity securities of companies located outside the United States.

3. The Adviser, a New York limited liability company, is registered under the Investment Advisers Act of 1940. The Adviser serves, or will serve, respectively, as the investment adviser to Dividend Trust and Global Trust. Applicants represent that the investment advisory fee structure for Global Trust will be the same as the advisory fee structure for Dividend Trust.

4. The board of trustees of Dividend Trust consists of ten trustees, five of whom are also trustees of the six member board of trustees of Global Trust (each such board of trustees, a ''Board'' and collectively, the ''Boards''). Seven trustees on the Board of Dividend Trust are not ''interested persons,'' as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), and five trustees on the Board of Global Trust are Independent Trustees. The President and the Treasurer of Dividend Trust hold the same offices with Global Trust.

5. The Board of Dividend Trust has approved, subject to the issuance of the requested relief and subsequent shareholder approval, the contribution of a segment of Dividend Trust's assets having a value of approximately $100 million to Global Trust, in exchange for

shares of Global Trust common stock. It is anticipated that the contributed assets will consist largely or exclusively of cash and short-term fixed income instruments. All the shares of common stock of Global Trust will then be distributed by Dividend Trust as a dividend to its common shareholders at an anticipated rate of one (1) share of Global Trust common stock for every ten (10) shares held of Dividend Trust common stock.[1] The contribution of the Dividend Trust assets to Global Trust and the subsequent distribution of shares of Global Trust common stock to Dividend Trust common shareholders are referred to as the ''Transaction.''[2]

6. The Proxy Statement/Prospectus of the Funds will be used, following the issuance of the requested relief, to solicit approval of the Dividend Trust shareholders of the Transaction. Prior to the effectiveness of the Proxy Statement/Prospectus under the 1933 Act, Dividend Trust will purchase shares of Global Trust's common stock in consideration of Dividend Trust's contribution to Global Trust of at least $100,000 initial net asset value (the ''Seed Capital Shares''), in order to satisfy the requirements of section 14(a) of the Act. Applicants intend that the Seed Capital Shares will be included in the distribution of Global Trust's shares of common stock to the common shareholders of Dividend Trust, and, accordingly, will be sold pursuant to a registration statement under the 1933 Act.

7. The Board of Dividend Trust, including all the Independent Trustees, concluded that the Transaction will result in the following benefits to Dividend Trust common shareholders: (a) shareholders will receive shares of an investment company with a different risk-return profile than Dividend Trust; (b) shareholders will acquire the shares of Global Trust common stock at a much lower transaction cost than is typically the case for a newly-organized closed-end equity fund since there will be no underwriting discounts or commissions; and (c) shareholders will be afforded the opportunity to seek the capital growth opportunities presented by substantial foreign securities exposure.

8. The Board of Dividend Trust has been advised by counsel that the distribution of common shares of Global Trust to the common shareholders of Dividend Trust likely will be a taxable event for Dividend Trust common shareholders to some extent and, under certain circumstances, also will be a taxable event for Dividend Trust. Dividend Trust does not expect that it will recognize significant taxable gain on its distribution of Global Trust common shares because it does not expect any of the contributed short-term debt securities to have a value at the time of their contribution to Global Trust significantly in excess of Dividend Trust's tax basis for those securities. Further, the Transaction is not expected to increase significantly the total amount of taxable distributions received by Dividend Trust common shareholders for the year in which the Transaction is consummated because Dividend Trust has adopted a policy of distributing to shareholders monthly substantially all of its taxable income and, accordingly, any taxable income included in the distribution of Global Trust common shares would be distributed at some point during the year. The Board of Dividend Trust, including all of the Independent Trustees, has considered the tax consequences of the Transaction and has determined that the benefits of the Transaction outweigh any adverse tax consequences to Dividend Trust and its common shareholders, particularly because such adverse tax consequences are expected to be minimal.

9. The costs of organizing Global Trust and effecting the distribution of Global Trust's shares to Dividend Trust's common shareholders, including the fees and expenses of counsel and accountants and printing, listing and registration fees, the costs of soliciting shareholder approval of the Transaction, and the costs incurred in connection with the application for relief, are estimated to be approximately $750,000, and will be borne by Dividend Trust. Global Trust will incur operating expenses on an ongoing basis, including legal, auditing, transfer agency, and custodian expenses that, when aggregated with the fees payable by Dividend Trust for similar services after the distribution, will likely exceed the fees and expenses currently payable by Dividend Trust for those services. The Board of Dividend Trust, including all of the Independent Trustees, concluded that it is appropriate for Dividend Trust to bear the Transaction's costs inasmuch as the benefits of the Transaction will be for Dividend Trust's common shareholders and because absorption of such expenses will eliminate any deficit in the net asset value of Global Trust common shares in comparison to the amount of the distribution, which may support the pricing of Global Trust common shares in trading on the New York Stock Exchange. It is not expected that the Transaction will have a significant effect on the annual expenses of Dividend Trust as a percentage of its assets.

Applicants' Legal Analysis

1. Applicants request an order under section 17(b) of the Act granting an exemption from section 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain joint transactions.

2. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose voting securities are directly or indirectly owned controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Dividend Trust may be viewed as an affiliated person of Global Trust under section 2(a)(3) because Dividend Trust will own 100 percent of the Global Trust's voting securities until the consummation of the Transaction. Dividend Trust and Global Trust also may be viewed as affiliated persons of each other to the extent that they may be deemed to be under the common control of the Adviser. As a result of the affiliation between Dividend Trust and Global Trust, section 17(a) would prohibit the Transaction.

3. Applicants request an exemption pursuant to section 17(b) of the Act from the provisions of section 17(a) in order to permit applicants to effect the Transaction. Section 17(b) authorizes the Commission to issue such an exemptive order if the Commission finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any persons concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act.

4. Applicants assert that the terms of the Transaction, including the

[1] This estimate is based on the number of Dividend Trust common shares outstanding as of December 31, 2013 and a target initial net asset value per share of Global Trust common stock of $12.00.

[2] No fractional shares of Global Trust common stock will be issued as part of the Transaction. The fractional shares to which holders of Dividend Trust common stock would otherwise be entitled will be aggregated and an attempt to sell them in the open market will be made at then-prevailing prices on behalf of such holders, and such holders will receive instead a cash payment in the amount of their pro rata share of the total sales proceeds.

consideration to be paid or received, are fair and reasonable and do not involve overreaching by any person concerned. Applicants state that the proposed contribution by Dividend Trust of a portion of its assets to Global Trust in exchange for shares of Global Trust common stock will be based on the fair value of such assets computed as of the close of trading on the New York State Exchange on a business day to be selected by the Board of Dividend Trust (such business day, the ''Valuation Date''), in the same manner as for purposes of the daily net asset valuation for Dividend Trust. The Transaction will occur after the close of trading on the New York Stock Exchange on the Valuation Date. Applicants anticipate that such assets will consist largely or exclusively of cash and short-term fixed income instruments and thus will pose no issues with respect to valuation. Shares of Global Trust common stock distributed by Dividend Trust in the Transaction will be valued based on the value of Global Trust's assets. ''Value'' for those purposes will be determined in accordance with the provisions of section 2(a)(41) of the Act and rule 2a–4 under the Act.

5. With respect to the Transaction, each Board, including a majority of the Independent Trustees, determined that participation in the Transaction is in the best interests of Dividend Trust or Global Trust, as applicable, and that the interests of the existing shareholders of Dividend Trust or Global Trust, as applicable, will not be diluted as a result of the Transaction. These findings, and the basis upon which the findings were made, will be recorded fully in the minute book of Dividend Trust or Global Trust, as applicable.

6. Applicants state that the Transaction will be consistent with the stated investment policies of Dividend Trust and Global Trust as disclosed to shareholders. The distribution of shares of Global Trust common stock will not initially change the position of Dividend Trust's shareholders with respect to the underlying investments that they then own. The Proxy Statement/Prospectus will be used to solicit the approval of Dividend Trust's shareholders of the Transaction at a vote to take place following the issuance of the requested order. Dividend Trust's shareholders will have the opportunity to vote on the Transaction after having received disclosure concerning the Transaction.

7. Applicants also seek an order under section 17(d) of the Act and rule 17d–1 under the Act. Section 17(d) and rule 17d–1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the Commission. In passing on applications for these orders, rule 17d–1 provides that the Commission will consider whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of the other participants. Applicants request an order pursuant to rule 17d–1 to the extent that the participation of applicants in the Transaction may be deemed to constitute a prohibited joint transaction.

8. Applicants state that the Transaction will not place any of Dividend Trust, Global Trust, or existing shareholders of Dividend Trust in a position less advantageous than that of any other person. The value of Dividend Trust's assets transferred to Global Trust (and the shares of Global Trust common stock received in return) will be based on the fair value of such assets computed as of the close of trading on the New York Stock Exchange on the Valuation Date in accordance with the requirements of the Act and pursuant to valuation procedures adopted by the Board of Dividend Trust. The shares of Global Trust common stock will be distributed to Dividend Trust's common shareholders, leaving the shareholders in the same investment posture immediately following the Transaction as before, subject only to changes in market price of the underlying assets subsequent to the Transaction.

9. Applicants assert that the Transaction has been proposed in order to benefit the shareholders of Dividend Trust as well as Global Trust. Applicants state that neither the Adviser nor any other affiliated person of Dividend Trust or Global Trust will receive additional fees solely as a result of the Transaction. In addition, applicants state that although it is possible that the creation of Global Trust may benefit the Adviser by providing it with an additional managed fund, the Board of Dividend Trust has determined that such result does not supply a benefit that could not have otherwise been achieved through an initial public offering of a global equity securities fund and that such benefit is both marginal and hypothetical because the assets of Dividend Trust to be contributed to Global Trust pursuant to the Transaction represent only approximately 5.0% of Dividend Trust's net assets as of December 31, 2013. In addition, by creating Global Trust through the Transaction, Dividend Trust is effectively enabling its common shareholders to receive securities without the costs associated with a public offering.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02933 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933; Release No. 9546/February 5, 2014; Securities Exchange Act of 1934; Release No. 71494/February 5, 2014]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2014

The Sarbanes-Oxley Act of 2002, as amended (the ''Sarbanes-Oxley Act''),[1] established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Securities and Exchange Commission (the ''Commission'').

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital and accrued items. The PCAOB's annual budget and accounting support fee is subject to approval by the Commission.

Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'')[2] amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

[1] 15 U.S.C. 7201 *et seq.*

[2] Pub. L. No. 111–203, 124 Stat. 1376 (2010).

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P facilitates the Commission's review and approval of PCAOB budgets and annual accounting support fees.[3] This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2013 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2014 budget year. In response, the Commission provided the PCAOB with economic assumptions and budgetary guidance for the 2014 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Offices of the Chief Accountant and Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects and budget estimates; reviewed the PCAOB's estimates of 2013 actual spending; and attended several meetings with management and staff of the PCAOB to further develop an understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a ''pass back'' letter to the PCAOB. On November 25, 2013, the PCAOB approved its 2014 budget during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2014 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2014 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2014. The Commission also acknowledges the PCAOB's updated strategic plan and is supportive of the Board's continued work on its six new near-term priority projects. The Commission encourages the PCAOB to continue keeping the Commission and its staff apprised of developments throughout the implementation of these near-term projects and looks forward to providing views to the PCAOB as future updates are made to the plan.

The Commission understands that in recent years the PCAOB has taken significant and productive steps to improve its information technology (''IT'') program. These steps include IT staffing changes, implementing stronger IT governance structures, and strengthening Board oversight over its IT program. Based upon updates provided by the PCAOB, the Commission also understands that these efforts are ongoing; and directs the Board to continue to provide in its quarterly reports to the Commission detailed information about the state of the PCAOB's IT program, including planned, estimated, and actual costs for IT projects, and the level of involvement of consultants. These reports also should continue to include: (a) a discussion of the Board's assessment of the progress and implementation of the Board actions mentioned above; and (b) the quarterly IT report that will be prepared by PCAOB staff and submitted to the Board.

The Commission also directs the PCAOB during the 2014 budget cycle to continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information is to include: (a) statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2014, including by location and by year the inspections that are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules; (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections; and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

The Commission understands that the Office of Management and Budget (''OMB'') has determined the 2014 budget of the PCAOB to be sequestrable under the Budget Control Act of 2011.[4] Unless legislation occurs that avoids sequestration, the PCAOB's 2014 spending level would be reduced. In the event that sequestration is not avoided, we expect the PCAOB to work with the Commission and Commission staff, as appropriate, regarding the impact of sequestration on the PCAOB's 2014 spending.

The Commission has determined that the PCAOB's 2014 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2014 are approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2014–02899 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 202.190.

[4] See ''OMB Report Pursuant to the Sequestration Transparency Act of 2012'' (Pub. L. 112–155), page 218 of 224 at: *http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71489; File No. SR–CBOE–2013–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Withdrawal of Proposed Rule Change To Amend Its Rules Regarding Option Orders That Include a Stock Component

February 5, 2014.

On October 31, 2013, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b 4 thereunder,[2] a proposed rule change to amend CBOE's rules regarding option orders that include a stock component. The proposed rule change was published for comment in the **Federal Register** on November 19, 2013.[3] The Commission received two comment letters regarding the proposed rule change.[4] On December 23, 2013, the Commission extended the time period in which to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70857 (November 13, 2013), 78 FR 69487.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, dated December 10, 2013; and Ellen Greene, Vice President, Securities Industry and Financial Markets Association, dated December 16, 2013.

either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to February 17, 2014.[5] On January 31, 2014, the Exchange withdrew the proposed rule change (SR–CBOE–2013–107).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02877 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71480; File No. SR–BOX–2014–07]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule

February 5, 2014.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 2014, BOX Options Exchange LLC (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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Market LLC (''BOX'') options facility to remove the reference to the Nasdaq 100 Index (NDX) as well as to modify language in the footnotes. 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to remove the reference to the Nasdaq 100 Index (NDX) and to modify language in the footnotes.

Because the Exchange has delisted the Nasdaq 100 Index (NDX),[5] the Exchange proposes to remove the reference to NDX from the BOX Fee Schedule. Currently, Section I Exchange Fees of the BOX Fee Schedule provides for a surcharge to be applied to options on any index traded on BOX; which includes a $0.22 per contract surcharge for options on NDX. The Exchange has since delisted options on NDX and they are no longer traded on BOX. As such, no related surcharge will apply, and the Exchange is proposing to remove the reference to the BOX Fee Schedule.

In addition, the Exchange is proposing to amend the language in footnotes 6 and 7 in Sections I.A. and I.B. of the Fee Schedule. The Exchange recently added these footnotes to permit the Exchange to adjust the average daily volume calculation for any trading day on which the Exchange is closed for trading due to an early closing or a market-wide trading halt.[6] The Exchange proposes to modify the language in these footnotes to state ''For purposes of calculating monthly ADV, BOX *will* count as a half day any day that the market closes early for a holiday observance.'' The Exchange believes this proposed change will reduce investor confusion by clarifying when the Exchange will make adjustments to the monthly Average Daily Volume (''ADV'') calculation.

Specifically, all days where the Exchange closes early for holiday observance will be counted as a half day in the monthly ADV calculation. While Participants are always aware in advance of early close days, these are typically low volume days and the Exchange believes counting these days as a full day for purposes of the ADV calculation would not be fair to Participants. This will clarify that the Exchange will not make any adjustments to the ADV calculation on days where trading in all securities was halted for a period of time. While certain exchanges remove these days from their ADV calculations,[7] the Exchange believes that the timing and impact of trading halts can vary substantially, and removing these days entirely from the ADV calculation is not always appropriate. Since trading halts occur very rarely, the Exchange believes it is reasonable to always include these days in the ADV calculation and that doing so will reduce investor confusion about what instances qualify for the ADV adjustment.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In particular, this proposed change removes from the BOX Fee Schedule a reference to a fee that is no longer applicable since options on NDX have been delisted and are no longer traded on BOX. Additionally, the proposed modification to the language in footnotes 6 and 7 will provide greater clarity to the Exchange's procedures for making adjustments in calculating monthly ADV on days when the market

[5] *See* Securities Exchange Act Release No. 71178, 78 FR 79534 (December 30, 2013).

[6] 17 CFR 200.30–3(a)(31).

[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] *See* Securities Exchange Act Release No. 71084 (December 16, 2013), 78 FR 77185 (December 20, 2013) (SR–BOX–2013–58) (Notice of Filing and Immediate Effectiveness).

[6] *See* Securities Exchange Act Release No. 71025 (December 6, 2013), 78 FR 75644 (December 12, 2013) (SR–BOX–2013–55) (Notice of Filing and Immediate Effectiveness).

[7] NASDAQ OMX PHLX, LLC (''PHLX''), NASDAQ Options Market (''NOM'') and the International Securities Exchange, LLC (''ISE'') all exclude days from their respective ADV calculations if there a trading halt in all securities or the exchange is honoring a market-wide trading halt declared by another market.

[8] 15 U.S.C. 78f(b)(4) and (5).

closes early for holiday observances thereby reducing investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are not designed to address any competitive issue but rather would remove the reference to NDX that is no longer applicable because options on NDX have been delisted and are no longer traded on BOX and would provide clarification to the Exchange's procedures for making adjustments in calculating monthly ADV on days when the market closes early for holiday observances.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BOX–2014–07 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–BOX–2014–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2014–07 and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02873 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71490; File No. SR–MIAX–2014–04]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fee Schedule

February 5, 2014.

Pursuant to the provisions of 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 January 28, 2014, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to modify the Market Maker Trading Permit Fee.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its Market Maker Trading Permit fee to increase the monthly Trading Permit fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

that applies to Registered Market Makers (''RMMs''). Specifically, the Exchange proposes to increase the monthly Trading Permit fee that applies to RMMs by $1,000, so that it is the same as fees that currently apply to Primary Lead Market Makers (''PLMMs'') and Lead Market Makers (''LMMs'').

The Exchange issues Trading Permits that confer the ability to transact on the Exchange.[3] The Exchange assesses monthly fees for Trading Permits depending upon the category of Member that is issued a particular trading permit.[4] EEMs are assessed a monthly fee of $1,000 for a Trading Permit. Registered Market Makers (''RMMs'') are assessed $3,000.00 per month for a Trading Permit for an RMM assignment in up to 100 option classes, $4,500.00 per month for a Trading Permit for an RMM assignment in up to 250 option classes, or $6,000.00 per month for a Trading Permit for an RMM assignment in all option classes listed on MIAX.[5] Primary Lead Market Makers (''PLMMs'') and Lead Market Makers (''LMMs'') are assessed the same monthly Trading Permit fees applicable to RMMs described above plus $1,000.00 per month. Thus, an LMM or PLMM are [sic] be assessed $4,000.00 per month for a Trading Permit for an LMM or PLMM assignment in up to 100 option classes, $5,500.00 per month for a Trading Permit for an LMM or PLMM assignment in up to 250 option classes, or $7,000.00 per month for a Trading Permit for an LMM or PLMM assignment in all option classes listed on MIAX.

The Exchange proposes to increase the monthly Trading Permit fee that applies to RMMs by $1,000, so that it is the same as fees that currently apply to PLMMs and LMMs. All Market Makers, whether they are a RMM, LMM or PLMM, will be assessed $4,000.00 per month for a Trading Permit for an assignment in up to 100 option classes, $5,500.00 per month for a Trading Permit for an assignment in up to 250 option classes, or $7,000.00 per month for a Trading Permit for an assignment in all option classes listed on the Exchange. The Exchange notes that few Market Makers have registered as RMMs, irrespective of the slightly lower monthly fee. As such, the Exchange believes that it is unnecessary to continue to charge a different Trading Permit fee to RMMs versus LMMs and PLMMs. The Exchange believes that the change will result in a less discriminatory fee structure for Market Maker Trading Permits, pursuant to which all Market Makers will be treated the same based on the number of assignments.

The Exchange notes that the monthly Trading Permit fees are generally lower than monthly trading permit fees in place at CBOE and the NASDAQ OMX PHLX LLC (''PHLX''). The $1,000 monthly Trading Permit fee assessed to EEMs is lower than the CBOE's monthly electronic access trading permit fee ($1,600) and the PHLX's monthly permit fee for members ($2,150). The Monthly Trading Permit Fees assessed to MIAX Market Makers is readily comparable to and lower than the monthly fees in place at PHLX for Remote Streaming Quote Traders ($5,000 per month for less than 100 classes, $8,000 per month for more than 100 classes and less than 999 classes, and $11,000 per month for 1,000 or more classes).

Members receiving Trading Permits during the month will be assessed Trading Permit Fees according to the above schedule, except that the calculation of the Trading Permit fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days occurring after the date on which the Trading Permit was in effect during that first month divided by the total number of trading days in such month multiplied by the monthly rate.

The Exchange proposes to implement the Trading Permit fees beginning February 1, 2014.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Trading Permit fee is reasonable, equitable and not unfairly discriminatory. The Exchange notes that the Trading Permit fees are lower than comparable fees at other exchanges as described in the Purpose section above. As such, the proposal is reasonably designed because it will incent market participants to register as Market Makers on the Exchange in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed fee is fair and equitable and not unreasonably discriminatory because it will enable the Trading Permit fee to apply equally to all Market Makers regardless of type. All similarly situated Market Makers, with the same number of assignments, will be subject to the same Trading Permit fee, and access to the Exchange is offered on terms that are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal increases both intermarket and intramarket competition by marginally increasing Trading Permit fees for Market Makers on the Exchange in a manner that allows all Market Makers to be subject to the same fee based on the number of assignments regardless of type and yet still be lower than comparable fees on other exchanges. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposal reflects this competitive environment because it increases the Exchange's fees in a manner that continues to encourage market participants to register as Market Makers on the Exchange, to provide liquidity, and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity.

[3] There is no limit on the number of Trading Permits that may be issued by the Exchange; however the Exchange has the authority to limit or decrease the number of Trading Permits it has determined to issue provided it complies with the provisions set forth in Rule 200(a) and Section 6(c)(4) of the Exchange Act. *See* 15 U.S.C. 78f(c)(4). For a complete description of MIAX Trading Permits, *see* MIAX Rule 200.

[4] The monthly Trading Permit Fee is in addition to the one-time application fee for MIAX Membership. The Exchange charges a one-time application fee based upon the applicant's status as either an Electronic Exchange Member (''EEM'') or as a Market Maker. Applicants for MIAX Membership as an EEM are assessed a one-time Application Fee of $2,500.00. Applicants for MIAX Membership as a Market Maker are assessed a one-time Application Fee of $3,000.00. The difference in the fee charged to EEMs and Market Makers reflects the additional review and processing effort needed for Market Maker applications.

[5] For the calculation of the monthly RMM Trading Permit Fees, the number of classes is defined as the greatest number of classes the RMM was assigned to quote in on any given day within the calendar month.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

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)(ii) of the Act.[8] 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–MIAX–2014–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2014–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference 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 publicly available.

All submissions should refer to File Number SR–MIAX–2014–04 and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71488; File No. SR–NYSE–2014–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 13 To Modify the Manner by Which MPL–ALO Orders Trade When Triggered by Arriving Interest

February 5, 2014.

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 January 31, 2014, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 13 to modify the manner by which MPL–ALO Orders trade when triggered by arriving interest. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Rule 13 to modify the manner by which MPL–ALO Orders trade when triggered by arriving interest.

The Exchange recently amended Rule 13 to add a new Midpoint Passive Liquidity Order (''MPL Order''), which is an undisplayed limit order that would automatically execute at the mid-point of the protected best bid (''PBB'') and the protected best offer (''PBO''). An MPL Order could interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places.[4]

Pursuant to paragraph (e) of Rule 13 governing MPL Orders, users may designate an MPL Order with an add-liquidity-only (''ALO'') modifier (''MPL–ALO Order''). An MPL–ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the book until triggered to trade by arriving contra-side marketable interest. For example, if there is a buy MPL Order ''A'' for 100 shares resting on the book when a sell MPL–ALO Order ''B'' for 100 shares arrives, even though B is marketable

[4] *See* Securities Exchange Act Release No. 71330 (Jan. 16, 2014), 79 FR 3895 (Jan. 23, 2014) (SR–NYSE–2013–71) (Order approving the MPL Order).

against A, both A and B remain undisplayed in the book until B is triggered to trade.[5]

The rule currently provides that an MPL–ALO Order would only be eligible to trade against incoming contra-side interest and would not interact with contra-side interest resting on the book. Accordingly, if B is triggered to trade by an arriving buy MPL Order ''C'' for 100 shares, the rule provides that B would not trade with A. Rather, B would only trade with the arriving interest, C. The Exchange believes that it is appropriate, however, that when a resting MPL–ALO is triggered to trade, it should be eligible to trade with both the arriving interest that triggered the MPL–ALO Order and any resting contra-side interest that was present before the MPL–ALO Order arrived. The Exchange believes that permitting the MPL–ALO to interact with both arriving and resting contra-side interest is consistent with the Exchange's current allocation model, set forth in Rule 72, which considers all interest at a price point on parity by agent.[6] It would also ensure that any resting interest that arrived before the triggering interest could participate in the execution.

Accordingly, the Exchange proposes to amend paragraph (e) of Rule 13 governing MPL Orders and delete the sentence, ''An MPL–ALO Order is only eligible to trade against incoming contra-side interest, and will ignore contra-side interest resting in the NYSE book'' and replace it with the following new rule text:

If triggered to trade, an MPL–ALO Order will be eligible to trade with both arriving and resting contra-side interest, but will not trade with a contra-side MPL–ALO Order. If an MPL–ALO Order trades with resting interest, the MPL–ALO Order will be considered the liquidity providing order.

As proposed, using the example above, when C arrives and triggers B to trade, B would be eligible to trade with both A and C. Consistent Rule 72(c)(viii), which provides that shares will be allocated in round lots, and Rule 72(c)(viii)(A), which provides that an allocation wheel for each security begins with the participant whose interest is entered or retained first on a time basis, because B is seeking an execution of 100 shares and A was entered before C, B would execute with A only. Although the arrival of C triggered the MPL–ALO Order, consistent with the Exchange's allocation model, it would not receive an execution.

The Exchange notes that if the execution size were larger than a round lot, C could receive an execution. Modifying the example above, if A were for 1000 shares, B were for 600 shares, and C were for 1000 shares, assuming A and C are different participants on the parity wheel, B would execute 300 shares with A and 300 shares with C. Accordingly, both A and C would get an execution opportunity.

The Exchange notes that an MPL–ALO Order is always a liquidity providing order. Accordingly, the Exchange proposes to amend the rule to specify that if an MPL–ALO Order trades with resting interest, the MPL–ALO Order will be considered the liquidity providing order. Finally, because an MPL–ALO Order is always a liquidity providing order, contra-side MPL–ALO Orders would never interact.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade, 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 proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the modification to the manner that an MPL–ALO Order interacts with both arriving and resting interest is designed to harmonize the treatment of MPL–ALO Orders with the Exchange's existing allocation rules. Specifically, Rule 72 already provides that interest at a price point is allocated on parity by agent. The Exchange believes it is appropriate to apply this allocation model consistently across all executions at the Exchange, and not exclude any interest because of sequencing of orders. As such, a resting MPL–ALO Order, when triggered to trade, would be eligible to trade with both arriving interest that triggered the trade, as well as any resting interest that may have been present when the MPL–ALO Order arrived. The Exchange further believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest because it ensures that all interest eligible to interact with an MPL–ALO Order based on price would be considered for an execution opportunity once that MPL–ALO Order has been triggered to trade, consistent with existing Rule 72.

The Exchange further believes that amending the rule text to be clear that MPL–ALO Orders would not interact with other MPL–ALO Orders removes impediments to and perfects the mechanism of a free and open market because it provides transparency in Exchange rules regarding the operation of MPL–ALO Orders. This aspect of the proposed rule change also promotes just and equitable principles of trade because it ensures that two orders designed to be liquidity providing will not execute against one another. Finally, the Exchange believes that amending the rule text to clarify that if an MPL–ALO Order trades with resting interest, the MPL-Order would be considered the liquidity providing order removes impediments to and perfects the mechanism of a free and open market because it provides transparency in Exchange rules regarding which interest would be considered liquidity providing in such a scenario.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes to the MPL–ALO Order will enhance order execution opportunities for member organizations by ensuring that MPL–ALO Orders would be eligible to interact with all interest available at a price point, consistent with existing Exchange rules governing order allocation.

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[9] and Rule 19b–4(f)(6) thereunder.[10] Because the

[5] The Exchange notes that this example would work the same if A were undisplayed non-MPL reserve interest eligible to trade at the same price as B.

[6] Paragraph (a) of Rule 13 governing MPL Orders already specifies that MPL Orders are allocated on parity by agent consistent with Rule 72.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it believes that waiver of the 30-day operative delay is appropriate because the Commission has already approved the adoption of the new MPL Order type. In addition, the Exchange stated that it has not yet implemented the MPL Order out of concern that the existing rule text would limit the opportunities for execution. By waiving the operative delay, the Exchange would be able to expeditiously make MPL Orders, including MPL–ALO Orders, available to member organizations in a manner that is consistent with existing Rule 72, thereby enhancing order execution opportunities for all member organizations. Thus, the Exchange believes that the proposed rule change would protect investors and the public interest because it would enable all interest that is eligible to interact at a price point to be considered for a trade with an MPL–ALO Order. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 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–2014–07 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–2014–07.* 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–2014–07 and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02876 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

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.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71483; File No. SR–NYSEArca–2014–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Fees for NYSE ArcaBook

February 5, 2014.

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 January 27, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 the fees for NYSE ArcaBook. The Exchange proposes to implement the fee changes effective February 1, 2014. 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] 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE ArcaBook. The Exchange proposes to implement the fee changes effective February 1, 2014.

NYSE ArcaBook is a real-time market data product that is a compilation of all limit orders resident in the NYSE Arca limit order book.[3] The Exchange charges the following monthly display fees for NYSE ArcaBook:

Access fee	$750
Redistribution Fee	$1,500
Subscriber Fees	Tape A & B Securities (including ETFs) Professional: $15 Non-professional: $5. Tape C Securities (excluding ETFs) Professional: $15 Non-professional: $5. Non-professional Fee Cap: $20,000.

The Exchange proposes to increase the monthly access fee from $750 to $2,000 and to offer Tape A and B Securities (including ETFs) and Tape C Securities (excluding ETFs) for a single monthly fee of $40 for professional subscribers and $10 for non-professional subscribers for display use. The Exchange would no longer offer separate pricing for the Tape C Securities (excluding ETFs) data. The Exchange has determined not to separately offer the Tape C option in order to have greater ease of management. The Exchange also notes that it has not increased NYSE ArcaBook access fees or the subscriber fees for display use since they were originally proposed in 2006.[4]

The Exchange proposes to make a technical change to remove the operative date for the NYSE ArcaBook redistribution fee, but does not otherwise propose any changes to the NYSE ArcaBook redistribution fee, non-professional fee cap, or non-display fees at this time. The Exchange notes that the access fee applies to all users of NYSE ArcaBook, regardless of whether they elect display, non-display, and/or managed non-display use.

The Exchange further believes that the proposed rule change is consistent with the market-based approach of the Securities and Exchange Commission (''Commission''). The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (DC Cir. 2010), upheld reliance by the Commission upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [5]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees proposed in this filing are the product of competition and therefore satisfy the relevant statutory standards.[6] In addition, the existence of alternatives to NYSE ArcaBook, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach.[7] The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[8]

[3] *See* SR–NYSEArca–2014–07.

[4] *See* Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770 (Dec. 9, 2008) (SR–NYSEArca–2006–21).

[5] *NetCoalition,* 615 F.3d at 535.

[6] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[7] *NetCoalition,* 615 F.3d at 536.

[8] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides an equitable allocation of reasonable fees among its members, issuers, and other persons using its facilities and is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [11] in that it is consistent with (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange believes that the proposed subscriber fees for display use of NYSE ArcaBook are reasonable because they are less than subscriber fees that are currently being charged for a comparable product by at least one other exchange.[13] The Exchange believes that the proposed subscriber fees are equitable and not unfairly discriminatory because the fee structure of differentiated professional and non-professional fees has long been used by the Exchange for other products, by other exchanges for their products, and by the CTA and CQ Plans in order to make data more broadly available to retail customers.[14] The Exchange further believes that continuing to offer NYSE ArcaBook to non-professional users with the same data available to professional users results in greater equity among data recipients.

The proposed access fee for NYSE ArcaBook also is reasonable because it is less than or equal to access fees that are currently charged by other exchanges for comparable products.[15] The Exchange believes that the proposed access fee for NYSE ArcaBook is equitable and not unfairly discriminatory because it will be charged uniformly to vendors and subscribers that elect to offer NYSE ArcaBook, whether for display, non-display, and/or managed non-display use.

The Exchange has not raised the subscriber fees for display use of NYSE ArcaBook or access fees for NYSE ArcaBook since the fees were originally proposed more than seven years ago, in 2006.[16] During this time period, the Exchange has enhanced NYSE ArcaBook through delivery upgrades, and the bandwidth to support NYSE ArcaBook has increased fivefold. The Exchange believes that the new fees are fair and reasonable in light of its ongoing effort to improve the delivery technology for market data.

The Exchange also notes that the use of NYSE ArcaBook is entirely optional. Firms have a wide variety of alternative market data products from which to choose.[17] Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers. For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary data feed products is constrained by (1) the inherent contestability of the market for proprietary data and actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market.

Competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In 2011, Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [19]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [20]

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4), (5).

[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

[13] The NASDAQ Stock Market LLC (''NASDAQ'') offers NASDAQ Level 2 with NASDAQ OpenView for a monthly fee of $51 per professional subscriber for NASDAQ, NYSE, and NYSE MKT issues ($45 for NASDAQ issues plus $6 for NYSE and NYSE MKT issues) and $10 per non-professional subscriber for NASDAQ, NYSE, and NYSE MKT issues ($9 for NASDAQ issues plus $1 for NYSE and NYSE MKT issues). *See* NASDAQ Rule 7023(b).

[14] *See,* e.g., Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing non-professional fees for CTA data); NASDAQ Rules 7023(b), 7047.

[15] The Exchange's affiliate, NYSE, charges a monthly access fee of $5,000 for its NYSE OpenBook product. *See* Securities Exchange Act Release No. 69278 (Apr. 2, 2013), 78 FR 20973 (Apr. 8, 2013) (SR–NYSE–2013–25). In addition, NASDAQ charges a monthly access fee for NASDAQ Level 2 of $3,000 for NASDAQ, NYSE, and NYSE MKT issues ($2,000 direct access fee for NASDAQ issues plus $1,000 direct access fee for NYSE and NYSE MKT issues). *See* NASDAQ Rule 7019(b).

[16] *See* Securities Exchange Act Release No. 54597 (Oct. 12, 2006), 71 FR 62029 (Oct. 20, 2006) (SR–NYSEArca–2006–21).

[17] *See supra* notes 13 and15.

[18] 15 U.S.C. 78f(b)(8).

[19] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[20] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14,

Continued

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, vendors will not elect to make available NYSE ArcaBook unless their subscribers request it, and subscribers will not elect to purchase it unless it can be used for profit-generating purposes. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[21] The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[22]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 14 equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, or setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives. The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, BDs, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Because market data users can thus find suitable substitutes for most proprietary market data

2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

[21] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110); and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* Securities Exchange Act Release Nos. 71217 (Dec. 31, 2013), 79 FR 875, 877 (Jan. 7, 2014) (SR–NASDAQ–2013–162) and 70945 (Nov. 26, 2013), 78 FR 72740, 72741 (Dec. 3, 2013) (SR–NASDAQ–2013–142) (''Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs.'').

[22] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' Quarterly Journal of Economics V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

products,[23] a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed subscriber and access fees for NYSE ArcaBook are generally lower than or the same as the subscriber and access fees charged by other exchanges such as NYSE and NASDAQ for comparable products.[24]

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS, and Direct Edge. Today, BATS and Direct Edge provide certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.[25]

Further, data products are valuable to certain end users only insofar as they provide information that end users expect will assist them or their customers. The Exchange believes that only vendors and subscribers that expect to derive a reasonable benefit from the ArcaBook will choose to pay the attendant monthly fees.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[26] of the Act and subparagraph (f)(2) of Rule 19b–4[27] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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–NYSEArca–2014–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–12. 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–NYSEArca–2014–12 and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02874 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

[23] *See supra* notes 13–15.

[24] *Id.*

[25] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71491; File No. SR–Phlx–2014–06]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for SPY Options

February 5, 2014.

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 January 29, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule to amend Simple Order pricing in Section I, entitled Rebates and Fees for Adding and Removing Liquidity in SPY.[3]

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on February 3, 2014.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Simple Order Fees for Removing Liquidity in Section I applicable to transactions overlying SPY. The Exchange currently assesses Customers, Specialists,[4] Market Makers,[5] Firms,[6] Broker-Dealers[7] and Professionals[8] a $0.45 per contract Fee for Removing Liquidity in SPY Simple Orders. The Exchange is proposing to increase the Fee for Removing Liquidity in SPY Simple Orders from $0.45 to $0.47 per contract for all market participants. Despite the increased fees, the Exchange believes that these fees remain competitive with other exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to increase the Fee for Removing Liquidity in Simple Orders for options overlying SPY from $0.45 to $0.47 per contract for all market participants is reasonable because the increase is consistent with or less than rates assessed by other options exchanges, such Topaz Exchange, LLC (''Gemini''), NYSE ARCA, Inc. (''NYSE Arca''), BATS Exchange, Inc. (''BATS'') and NASDAQ Options Market LLC (''NOM'').[11] The Exchange believes that its Fees for Removing Liquidity remain competitive with other options markets. While the Exchange is increasing these fees, these transactions are included in the calculation of Customer volume for purposes of qualifying for Customer Rebates in Section B of the Pricing Schedule.

The Exchange's proposal to increase the Fee for Removing Liquidity in Simple Orders for options overlying SPY from $0.45 to $0.47 per contract for all market participants is equitable and not unfairly discriminatory because all market participants will be assessed a uniform Fee for Removing Liquidity in Simple Orders for options overlying SPY of $0.47 per contract. The Exchange is assessing all market participants the same fee for removing liquidity in Simple Orders in SPY.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that increasing the SPY Simple Order Fees for Removing Liquidity for all market participants does not impose a burden on competition, but rather that the proposed rule change will continue to promote competition on the Exchange. All market participants will be assessed the same fee to remove SPY Simple Orders.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[3] Options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY'') are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500 Index.

[4] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[6] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

[7] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[8] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Gemini's Fee Schedule. Gemini assesses taker fees for Priority Customer of $0.45 per contract and $0.48 per contract for all market participants. *See* NYSE Arca fees Schedule. NYSE Arca assesses all non-customer market participants a take liquidity fee of $0.48 per contract. Customers are assessed $0.45 per contract for removing liquidity. Gemini permits its members to lower certain of these fees provided they meet certain criteria. *See* BATS BZX Exchange Fee Schedule. BATS assesses a $0.48 charge per contract for a Professional, Firm or Market Maker order that removes liquidity and $0.47 per contract for a Customer order that removes liquidity. BATS permits its members to lower certain of these fees provided they meet certain criteria. *See* NOM Rules at Chapter XV, Section 2. NOM assesses $0.45 per contract for a Customer to remove liquidity and $0.49 per contract for all other market participants, except NOM Market Makers who are assessed $0.48 per contract. NOM Participants are provided the ability to reduce certain fees provided they add requisite liquidity.

19(b)(3)(A)(ii) of the Act.[12] 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–Phlx–2014–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–06, and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02879 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71487; File No. SR–NYSEMKT–2014–15]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 13—Equities To Modify the Manner by Which MPL–ALO Orders Trade When Triggered by Arriving Interest

February 5, 2014.

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 January 31, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 13—Equities to modify the manner by which MPL–ALO Orders trade when triggered by arriving interest. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 13—Equities (''Rule 13'') to modify the manner by which MPL–ALO Orders trade when triggered by arriving interest.

The Exchange recently amended Rule 13 to add a new Midpoint Passive Liquidity Order (''MPL Order''), which is an undisplayed limit order that would automatically execute at the mid-point of the protected best bid (''PBB'') and the protected best offer (''PBO''). An MPL Order could interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places.[4]

Pursuant to paragraph (e) of Rule 13 governing MPL Orders, users may designate an MPL Order with an add-liquidity-only (''ALO'') modifier (''MPL–ALO Order''). An MPL–ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the book until triggered to trade by arriving contra-side marketable interest. For example, if there is a buy MPL Order ''A'' for 100 shares resting on the book when a sell MPL–ALO Order ''B'' for 100 shares arrives, even though B is marketable against A, both A and B remain undisplayed in the book until B is triggered to trade.[5]

The rule currently provides that an MPL–ALO Order would only be eligible to trade against incoming contra-side interest and would not interact with contra-side interest resting on the book.

[4] *See* Securities Exchange Act Release No. 71329 (Jan. 16, 2014), 79 FR 3904 (Jan. 23, 2014) (SR–NYSEMKT–2013–84) (Order approving the MPL Order).

[5] The Exchange notes that this example would work the same if A were undisplayed non-MPL reserve interest eligible to trade at the same price as B.

Accordingly, if B is triggered to trade by an arriving buy MPL Order ''C'' for 100 shares, the rule provides that B would not trade with A. Rather, B would only trade with the arriving interest, C. The Exchange believes that it is appropriate, however, that when a resting MPL–ALO is triggered to trade, it should be eligible to trade with both the arriving interest that triggered the MPL–ALO Order and any resting contra-side interest that was present before the MPL–ALO Order arrived. The Exchange believes that permitting the MPL–ALO to interact with both arriving and resting contra-side interest is consistent with the Exchange's current allocation model, set forth in Rule 72, which considers all interest at a price point on parity by agent.[6] It would also ensure that any resting interest that arrived before the triggering interest could participate in the execution.

Accordingly, the Exchange proposes to amend paragraph (e) of Rule 13 governing MPL Orders and delete the sentence, ''An MPL–ALO Order is only eligible to trade against incoming contra-side interest, and will ignore contra-side interest resting in the NYSE book'' and replace it with the following new rule text:

> If triggered to trade, an MPL–ALO Order will be eligible to trade with both arriving and resting contra-side interest, but will not trade with a contra-side MPL–ALO Order. If an MPL–ALO Order trades with resting interest, the MPL–ALO Order will be considered the liquidity providing order.

As proposed, using the example above, when C arrives and triggers B to trade, B would be eligible to trade with both A and C. Consistent Rule 72(c)(viii)—Equities, which provides that shares will be allocated in round lots, and Rule 72(c)(viii)(A)—Equities, which provides that an allocation wheel for each security begins with the participant whose interest is entered or retained first on a time basis, because B is seeking an execution of 100 shares and A was entered before C, B would execute with A only. Although the arrival of C triggered the MPL–ALO Order, consistent with the Exchange's allocation model, it would not receive an execution.

The Exchange notes that if the execution size were larger than a round lot, C could receive an execution. Modifying the example above, if A were for 1000 shares, B were for 600 shares, and C were for 1000 shares, assuming A and C are different participants on the parity wheel, B would execute 300 shares with A and 300 shares with C. Accordingly, both A and C would get an execution opportunity.

The Exchange notes that an MPL–ALO Order is always a liquidity providing order. Accordingly, the Exchange proposes to amend the rule to specify that if an MPL–ALO Order trades with resting interest, the MPL–ALO Order will be considered the liquidity providing order. Finally, because an MPL–ALO Order is always a liquidity providing order, contra-side MPL–ALO Orders would never interact.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade, 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 proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the modification to the manner that an MPL–ALO Order interacts with both arriving and resting interest is designed to harmonize the treatment of MPL–ALO Orders with the Exchange's existing allocation rules. Specifically, Rule 72—Equities already provides that interest at a price point is allocated on parity by agent. The Exchange believes it is appropriate to apply this allocation model consistently across all executions at the Exchange, and not exclude any interest because of sequencing of orders. As such, a resting MPL–ALO Order, when triggered to trade, would be eligible to trade with both arriving interest that triggered the trade, as well as any resting interest that may have been present when the MPL–ALO Order arrived. The Exchange further believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest because it ensures that all interest eligible to interact with an MPL–ALO Order based on price would be considered for an execution opportunity once that MPL–ALO Order has been triggered to trade, consistent with existing Rule 72—Equities.

The Exchange further believes that amending the rule text to be clear that MPL–ALO Orders would not interact with other MPL–ALO Orders removes impediments to and perfects the mechanism of a free and open market because it provides transparency in Exchange rules regarding the operation of MPL–ALO Orders. This aspect of the proposed rule change also promotes just and equitable principles of trade because it ensures that two orders designed to be liquidity providing will not execute against one another. Finally, the Exchange believes that amending the rule text to clarify that if an MPL–ALO Order trades with resting interest, the MPL-Order would be considered the liquidity providing order removes impediments to and perfects the mechanism of a free and open market because it provides transparency in Exchange rules regarding which interest would be considered liquidity providing in such a scenario.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed changes to the MPL–ALO Order will enhance order execution opportunities for member organizations by ensuring that MPL–ALO Orders would be eligible to interact with all interest available at a price point, consistent with existing Exchange rules governing order allocation.

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[9] and Rule 19b–4(f)(6) thereunder.[10] 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 for 30 days from the date on which it was filed, or such shorter time as the

[6] Paragraph (a) of Rule 13 governing MPL Orders already specifies that MPL Orders are allocated on parity by agent consistent with Rule 72—Equities.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 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.

Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it believes that waiver of the 30-day operative delay is appropriate because the Commission has already approved the adoption of the new MPL Order type. In addition, the Exchange stated that it has not yet implemented the MPL Order out of concern that the existing rule text would limit the opportunities for execution. By waiving the operative delay, the Exchange would be able to expeditiously make MPL Orders, including MPL–ALO Orders, available to member organizations in a manner that is consistent with existing Rule 72, thereby enhancing order execution opportunities for all member organizations. Thus, the Exchange believes that the proposed rule change would protect investors and the public interest because it would enable all interest that is eligible to interact at a price point to be considered for a trade with an MPL–ALO Order. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 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–NYSEMKT–2014–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–15. 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–NYSEMKT–2014–15 and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02875 Filed 2–10–14; 8:45 am]

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[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71479; File No. SR–NYSEArca–2013–141]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt New NYSE Arca Equities Rule 7.25 To Create a Crowd Participant Program on a Pilot Basis to Incent Competitive Quoting and Trading Volume in Exchange-Traded Products by Market Makers Qualified With the Exchange as CPs

February 5, 2014.

On December 6, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt the Crowd Participant Program, a one-year pilot program, to incent competitive quoting and trading volume in exchange-traded products (''ETPs'') by Market Makers qualified with the Exchange as Crowd Participants. The proposed rule change was published for comment in the **Federal Register** on December 26, 2013.[3] The Commission received no comment letters on the proposal.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71146 (Dec. 19, 2013), 78 FR 78426.

[4] 15 U.S.C. 78s(b)(2).

within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. The proposed rule change would, among other things, create a one-year pilot program, the Crowd Participant Program, for issuers of certain ETPs listed on the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 26, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2013–141).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02872 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71486; File No. SR–FINRA–2014–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements)

February 5, 2014.

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 January 24, 2014, 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. On February 4, 2014, FINRA filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, FINRA: (1) modified *Exhibit 5* to correct a marking error; and (2) modified Form 19b–4 on page 4 and Exhibit 1 on page 17 to replace the language ''exchange-traded funds formed as grantor or statutory trusts'' with the language ''collective investment vehicles that are not registered as investment companies.'' This Notice reflects the changes made by Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) to expand the circumstances in which termination fees and rights of first refusal are permissible; exempt from the filing requirements certain collective investment vehicles that are not registered as investment companies; and make clarifying, non-substantive changes regarding documents filed through FINRA's electronic filing system.[4]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) (the ''Rule''), among other things, regulates underwriting compensation, requires the filing of specified information in connection with public offerings in which members will participate, and prohibits unfair arrangements in connection with public offerings of securities. FINRA proposes to amend the Rule's provisions regarding unfair arrangements to: (1) Expand the circumstances under which members and issuers may negotiate termination fees and rights of first refusal (''ROFR''), with specified conditions; (2) exempt from the filing requirements exchange-traded funds formed as grantor or statutory trusts; and (3) codify the electronic filing requirement.

[4] The effective date of the electronic filing requirements under Rule 5110 was July 12, 2002. *See Notice to Members 02–26.*

Termination Fees and Rights of First Refusal

Rule 5110(f) (Unreasonable Terms and Arrangements) sets forth terms and arrangements that, when proposed in connection with a public offering of securities, are considered unfair and unreasonable. Rule 5110(f)(2)(D) addresses fees in connection with a public offering of securities that is not completed according to the terms of agreement between the issuer and underwriter (''terminated offering''). Specifically, paragraph (D) generally provides that it is unfair and unreasonable for a member to arrange for the payment of any compensation by an issuer in connection with a terminated offering (''termination fee'' or ''tail fee''). Paragraph (D) further clarifies that this prohibition does not include compensation negotiated and paid in connection with a separate transaction that occurs in lieu of the proposed offering, or reimbursement of out-of-pocket accountable expenses actually incurred by the member.[5]

Currently, paragraph (f)(2)(E) of Rule 5110 provides that, in the event that an issuer terminates an offering with an underwriter and subsequently consummates a similar transaction, a termination fee may be permissible under certain circumstances. Historically, FINRA has only considered permitting termination fee arrangements under this provision where the subsequent transaction is an exchange offer or similar offering where members provide substantial structuring or advisory services (beyond that traditionally provided in connection with a distribution of a public offering).[6] In such cases, FINRA believes that a

[5] Rule 5110(f)(2)(C) prohibits payment of commissions or reimbursement of expenses to an underwriter prior to the commencement of the sale of the securities being offered, except for a reasonable advance against out-of-pocket accountable expenses actually anticipated to be incurred by the underwriter. To the extent such expenses are not actually incurred, any advance received must be reimbursed to the issuer.

Paragraph (D) currently provides that the reimbursement of out-of-pocket accountable expenses actually incurred by the member will not be presumed to be unfair or unreasonable under normal circumstances. The proposed amendment modifies paragraph (D) to specify that out-of-pocket accountable expenses must be *bona fide.*

[6] *See Notice to Members 97–82* (November 1997). Further, the Rule provides that a tail fee may not have a duration of more than two years from the date the member's services are terminated; however, the Rule provides that a member may demonstrate on the basis of information satisfactory to FINRA that an arrangement of more than two years is not unfair or unreasonable under the circumstances.

termination fee may be appropriate given the extent of the services provided by the member to the issuer.

FINRA has reevaluated its rules around termination fees and believes it is appropriate to update the Rule to provide members with a greater degree of flexibility and expand the circumstances under which participating members and issuers may negotiate termination fee arrangements. Specifically, FINRA is proposing to amend Rule 5110(f)(2) (Prohibited Arrangements) to generally permit termination fees where: (1) the agreement between the participating member and the issuer specifies that the issuer has a right of ''termination for cause'' (*i.e.,* where a member fails materially to perform the underwriting services contemplated in the written agreement);[7] (2) the agreement specifies that an issuer's exercise of its right of ''termination for cause'' eliminates any obligations with respect to the payment of any termination fee;[8] (3) the amount of any specified termination fee is reasonable in relation to the services contemplated in the written agreement; and (4) the agreement specifies that the issuer is not responsible for paying the termination fee unless an offering or other type of transaction is consummated by the issuer (without involvement of the member) within two years of the date the engagement is terminated with the member by the issuer. FINRA believes the proposal provides members with a greater degree of flexibility in negotiating the terms of their agreements for terminated offerings, while also providing protection for issuers if a member fails materially to perform the underwriting services contemplated in the written agreement.

Current Rule 5110(f)(2)(F) and (G) address ''ROFRs'', which provide a member with the right to underwrite or participate in future public offerings, private placements or other financings of the issuer. Rule 5110(f)(2)(F) deems as unfair and unreasonable any ROFR provided to a member that: (1) Has a duration of more than three years from the date of effectiveness or commencement of sales of the public offering, or (2) provides more than one opportunity to waive or terminate the ROFR in consideration of any payment or fee.[9] Rule 5110(f)(2)(G) prohibits any payment or fee to waive or terminate a ROFR regarding future public offerings, private placements or other financings that exceed specified values or that is not paid in cash.

FINRA also has reevaluated its rules around ROFRs and proposes amendments to permit ROFRs in the case of both successful as well as terminated offerings. FINRA proposes that ROFRs would be permissible where: (1) The agreement between the participating member and issuer specifies that the issuer has a right of termination for cause (*i.e.,* where a member fails materially to perform the underwriting services contemplated in the written agreement); (2) an issuer's exercise of its right of ''termination for cause'' eliminates any obligations with respect to the provision of any ROFR; and (3) any fees arising from services provided under a ROFR are customary for those types of services. As is currently the case, the Rule would continue to provide that the duration of any ROFR may not be for more than three years from the date of commencement of sales of the public offering (in the case of a successful offering). In the case of a terminated offering, the duration may not be for more than three years from the date the engagement is terminated by the issuer. In both cases, the agreement may not provide for more than one opportunity to waive or terminate the ROFR in consideration of any payment or fee.[10]

Filing Requirements for Certain Exchange-Traded Funds

Rule 5110(b)(8) (Exempt Offerings) generally provides an exemption for investment companies from the filing requirements of the Rule.[11] Due to this exemption, exchange-traded funds (''ETFs'') that are structured as investment companies generally are exempt. However, this exemption does not include certain other ETFs that are not investment companies. FINRA believes it is appropriate to add an exemption for these ETFs even if they do not fall under the definition of an ''investment company'' for the same reason that investment company ETFs are exempted from the Rule. Specifically, the creation structure of ETFs, whereby the component securities are deposited in return for shares of the fund, is not a distribution model that Rule 5110 was designed to address. Thus, FINRA is proposing to exempt offerings of securities issued by a pooled investment vehicle, whether formed as a trust, partnership, corporation, limited liability company or other collective investment vehicle, that is not registered as an investment company under the Investment Company Act and has a class of equity securities listed for trading on a national securities exchange; provided that such equity securities may be created or redeemed on any business day at their net asset value per share.

Electronic Filing

Rule 5110(b) (Filing Requirements) generally provides that no member or person associated with a member shall participate in any manner in a public offering of securities subject to Rules 2310, 5110 or 5121 unless the specified documents and information relating to the offering have been filed with and reviewed by FINRA. FINRA proposes to amend the Rule to make clarifying, non-substantive changes regarding documents filed through FINRA's electronic filing system.[12]

Industry Consultation

FINRA engaged in an extensive consultative process regarding the proposed rule change, including through the issuance of a *Regulatory Notice* soliciting comment on the termination fee and ROFR provisions, the exemption for ETFs, and the codification of the electronic filings requirement. Commenters generally supported the proposal as set forth in the *Notice,* requesting certain clarifications and modifications. A summary of the comments received in response to the *Regulatory Notice* is discussed in Item 5 below.[13]

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days

[7] The specific meaning of ''termination for cause'' would be dictated by the agreement. For purposes of this proposal, a ''termination for cause'' would include a member's material failure to perform the underwriting services contemplated in the written agreement, but is not required to include events that are outside the participating member's control.

[8] Members would continue to be permitted to receive reimbursement of out-of-pocket, bona fide, accountable expenses actually incurred by the participating member in connection with a terminated offering.

[9] Historically, FINRA has interpreted the Rule to permit ROFRs only in the case of successful offerings.

[10] FINRA is proposing to redesignate Rule 5110(f)(2)(G) as Rule 5110(f)(2)(F), which prohibits any payment or fee to waive or terminate a ROFR regarding future public offerings, private placements or other financings that exceed specified values or that is not paid in cash.

[11] Rule 5110(b)(8)(C) exempts from the Rule's filing requirements securities of ''open-end'' investment companies as defined in Section 5(a)(1) of the Investment Company Act of 1940 (''Investment Company Act'') and securities of any ''closed-end'' investment company as defined in Section 5(a)(2) of the Investment Company Act that: (1) makes periodic repurchase offers pursuant to Rule 23c–3(b) under of the Investment Company Act; and (2) offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) of SEC Regulation C.

[12] The effective date of the electronic filing requirements under Rule 5110 was July 12, 2002. *See Notice to Members 02–26.*

[13] The Commission notes that Item 5 is part of the rule filing itself; it not part of this Notice.

following Commission approval. The effective date of the proposed rule change will be no later than 120 days following 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.

The proposed rule change provides more flexibility to issuers and participating members in the negotiation of termination fee and ROFR terms and arrangements, while also promoting just and equitable principles of trade by providing important protections for issuers who terminate agreements with members for cause. Issuers can benefit from the advice underwriters provide prior to raising capital, and may be able to utilize more of an underwriter's resources if they can wait to pay until they have the additional capital they plan to receive in a public offering. This may be especially true for foreign issuers that may need substantial advice and restructuring before accessing the U.S. capital markets. Accordingly, issuers may want to enter into termination fee or ROFR agreements if they provide an incentive to underwriters to devote additional resources when the risk of not receiving remuneration for those services is mitigated.

In addition, the proposed rule change provides an exemption for certain other collective investment vehicles that are not registered as investment companies, as exists for open-end and certain closed-end investment companies. The proposed rule change also formalizes that members must use FINRA's electronic filing system to file required information and documents relating to offerings in which they participate.

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. As discussed above, the proposed rule change sets out consistent rules for all members entering into agreements with issuers for the provision of services in connection with a public offering of securities, and also enhances competition among members that provide underwriting services to issuers by broadening the types of compensation arrangements that firms can negotiate with issuers. In addition, the amendments require that any termination fee paid must be reasonable in relation to the underwriting services contemplated and any ROFR fees paid must be customary in relation to the services the member provides.

Further, the proposed rule change provides additional protections to issuers that choose to enter into a termination fee agreement or provide a right of first refusal by requiring that the agreement provide issuers with a right to terminate for cause. Thus, under the proposal, issuers would have no obligation to pay a termination fee or be bound to a member by a ROFR if that member has failed materially to provide the underwriting services contemplated in the agreement.

The proposed rule change also would promote competition by eliminating disparate filing requirements for exchange-traded collective investment vehicles not registered as investment companies as compared to those that are structured as investment companies. FINRA does not believe that the codification of the electronic filing requirement or the other non-substantive and clarifying amendments contained in the filing will impact competition. Therefore, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On June 6, 2012, FINRA published *Regulatory Notice 12–27* (''Notice'' or ''Notice 12–27'') requesting comment on FINRA's proposal to amend Rule 5110. A copy of the *Notice* is attached as Exhibit 2a.[15] The comment period expired on July 23, 2012. FINRA received three comments in response to the *Notice*.[16] A list of the commenters in response to the *Notice* is attached as Exhibit 2b, and copies of the comment letters received in response to the Notice are attached as Exhibit 2c. A summary of the comments and FINRA's response is provided below.

In *Notice 12–27,* FINRA proposed amendments substantially similar to the instant proposal. FINRA proposed to expand the circumstances under which termination fees and ROFRs would be permissible while providing protections for issuers that terminate arrangements with members for cause. The *Notice* also proposed to eliminate the filing requirements for exchange-traded funds that are structured as grantor or statutory trusts.

Commenters generally supported the proposal as set forth in the *Notice* and requested certain clarifications and modifications. With respect to the ''termination for cause'' provision, two commenters expressed concern that the provision would give an issuer broad discretion regarding the circumstances in which it could avoid paying an agreed upon termination fee to a member in the event of a terminated offering.[17] One commenter suggested limiting the circumstances under which an issuer could exercise its right to terminate for cause to an action or event that is ''within the direct control of the member'' and results in a material failure on the part of the member to provide the underwriting services.[18] Commenters also suggested that the issuer's termination for cause should take into account current market, economic and political conditions.[19] Another commenter suggested that the issuer's termination for cause be limited to cases in which the issuer requests the member to perform customary and reasonable services in connection with the public offering and ''it is determined that the member has materially failed to provide such services.'' [20]

FINRA continues to believe that it is an important issuer protection that members' arrangements include an issuer's right to terminate an agreement for cause, but has modified the proposal to provide that a ''termination for

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] The Commission notes that Exhibits 2a, 2b, and 2c, are part of the rule filing itself; they are not exhibits to this Notice.

[16] *See* Letter from Bradley J. Swenson, Chief Compliance Officer, ALPS Distributors, Inc., to Joseph E. Price, Senior Vice President, FINRA, dated July 23, 2012 (''ALPS letter''); letter from Sean Davy, Managing Director, Corporate Credit Markets Division, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated July 23, 2012 (''SIFMA letter''); and letter from Jeffrey W. Rubin, Chair, Federal Regulation of Securities Committee, Business Law Section of the American Bar Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated July 30, 2012 (''ABA letter'').

[17] *See* ABA and SIFMA letters.

[18] *See* ABA letter.

[19] *See* ABA and SIFMA letters.

[20] *See* SIFMA letter. SIFMA also suggested that the termination for cause provision be operative as a function of the rule itself and not be required to be included in the written agreement. FINRA disagrees and believes it is important that the termination clause be known to issuers and set forth in any written agreement regarding the provision of underwriting services by a participating member in connection with a public offering of securities.

cause'' shall include the participating member's material failure to provide the underwriting services contemplated in the agreement, since agreements may be drafted broadly to include services that are not related to the member's role as an underwriter. FINRA also has clarified in this filing that an issuer's termination of an agreement due to events that are outside the member's control need not constitute a ''termination for cause'' under the proposal.

One commenter suggested amending the ''termination for cause'' provision to allow related persons and affiliates of the issuer and member to be parties to the written agreement noting that, in certain cases, the provisions and associated obligations may be reflected in an agreement between these persons.[21] Rule 5110 defines the terms ''issuer'' and ''participating member'' broadly to include certain related persons and affiliates. FINRA has revised the proposal to reflect the term ''participating member'' when referencing the parties to a member's written agreement with an issuer.

Notice 12–27 proposed that the agreement between the issuer and member provide that any termination fee must be reasonable and any fee arising from services provided under a ROFR be customary. Commenters argued that requiring the inclusion of the reasonable and customary language in a written agreement between the issuer and member is unnecessary and suggested that FINRA require these standards in the rule, but not require that they be expressed in the written agreement.[22] FINRA agrees and has reflected those changes in the instant filing. One commenter also suggested that FINRA clarify whether an issuer's payment of termination fees would be considered underwriting compensation in connection with a subsequent public offering that has been consummated within two years of the termination of services.[23]

In *Notice 12–27,* FINRA proposed an exemption from the filing requirements for ETFs formed as a grantor trust or statutory trust in which the portfolio assets include commodities, currencies or other assets that are not securities. Commenters supported this proposed amendment and further suggested that FINRA modify the proposed rule language to define the term ''ETF'' and broadly exempt from the Rule all ETFs without regard to how they are structured and organized.[24] FINRA has amended the language of the proposal to exempt offerings of securities issued by a pooled investment vehicle, whether formed as a trust, partnership, corporation, limited liability company or other collective investment vehicle, that is not registered as an investment company under the Investment Company Act and has a class of equity securities listed for trading on a national securities exchange; provided that such equity securities may be created or redeemed on any business day at their net asset value per share. FINRA believes that the current exemption for investment companies would capture virtually all other ETFs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove 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–2014–004 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–2014–004. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of 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–2014–004, and should be submitted on or before March 4, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02934 Filed 2–10–14; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* SIFMA letter.

[22] *See* ABA and SIFMA letters. SIFMA stated that these standards should be ''operative as a function of the rule itself and should not be required to be set forth in a written agreement . . . .''

[23] *See* SIFMA letter. Under the Rule, items of value, such as termination fees or fees paid for services rendered pursuant to a ROFR are counted as compensation if they are received within 180 days prior to filing an offering or during the offering period. *See* Rule 5110(c)(3)(A)(xiii).

[24] *See* ABA and ALPS letters.

[25] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public

comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before April 14, 2014.

ADDRESSES: Send all comments to Meghan Milloy, Presidential Management Fellow, Office of 7(a) Policy and Programs, Small Business Administration, 409 3rd Street SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Meghan Milloy, Presidential Management Fellow, 202–619–1654 *meghan.milloy@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 13 of the Small Business Act (15 U.S.C. 642) requires that the owners, partners or officers of a small business receiving a business loan guaranteed by SBA (''Applicant'') to identify the names of persons engaged by or on behalf of the Applicant for the purpose of facilitating the application and report the fees paid or to be paid to any such person. SBA regulations at 13 CFR 103.5 require any Agent to execute and provide to SBA a compensation agreement showing the compensation charged for services rendered or to be rendered to the Applicant or lender in any matter involving SBA assistance. ''Agent'' is an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an applicant or participant by conducting business with SBA. (13 CFR Part 103 and sections 120.221 and 120.222 contain rules governing compensation of Agents in connection with a 7(a) loan. These rules may be found at the code of federal regulations Web site, *http://www.e-cfr.gov*.

Title: ''Compensation Agreement''.

Form Number's: 159(7a), 159(504), 159D.

Annual Responses: 9,210.

Annual Burden: 1,385.

Curtis Rich,

Management Analyst.

[FR Doc. 2014–02892 Filed 2–10–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13878 and #13879]

Florida Disaster #FL–00097

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 01/30/2014.

Incident: Severe storms, heavy rainfall, strong winds, and flooding.

Incident Period: 01/09/2014 through 01/10/2014.

Effective Date: 01/30/2014.

Physical Loan Application Deadline Date: 03/31/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 10/30/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Palm Beach.

Contiguous Counties:

Florida: Broward, Glades, Hendry, Martin, Okeechobee.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.500
Homeowners Without Credit Available Elsewhere	2.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13878 B and for economic injury is 13879 0.

The State which received an EIDL Declaration # is FLORIDA.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 30, 2014.

Jeanne Hulit,

Acting Administrator.

[FR Doc. 2014–02889 Filed 2–10–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13883 and #13884]

Indiana Disaster #IN–00053

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 02/05/2014.

Incident: Severe storms, straight-line winds, and tornadoes.

Incident Period: 11/17/2013.

Effective Date: 02/05/2014.

Physical Loan Application Deadline Date: 04/07/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 11/05/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Daviess; Fountain; Howard.

Contiguous Counties:

Indiana: Carroll; Cass; Clinton; Dubois; Grant; Greene; Knox; Martin; Miami; Montgomery; Parke; Pike; Tippecanoe; Tipton; Vermillion; Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.500
Homeowners Without Credit Available Elsewhere	2.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13883 C and for economic injury is 13884 0.

The State which received an EIDL Declaration # is INDIANA.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 5, 2014.

Jeanne Hulit,

Acting Administrator.

[FR Doc. 2014–02888 Filed 2–10–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13885 and #13886]

Oklahoma Disaster #OK–00075

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4164–DR), dated 01/30/2014.

Incident: Severe winter storm.

Incident Period: 12/05/2013 through 12/06/2013.

Effective Date: 01/30/2014.

Physical Loan Application Deadline Date: 03/31/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 10/30/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/30/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Choctaw, Le Flore, McCurtain, Pushmataha.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13885B and for economic injury is 13886B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–02887 Filed 2–10–14; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 14–01; February 13, 2014]

Sunshine Act Meeting Notice

The TVA Board of Directors will hold a public meeting on February 13, 2014, in the Missionary Ridge Auditorium of the Chattanooga Office Complex, 1101 Market Street, Chattanooga, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (ET). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (ET). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

Chairman's Welcome

Old Business

Approval of minutes of November 14, 2013, Board Meeting

New Business

1. Report from President and CEO
2. Report of the External Relations Committee
   A. Regional Resource Stewardship Council Charter
3. Report of the Audit, Risk, and Regulation Committee
4. Report of the People and Performance Committee
   A. Conforming Amendment to TVA Bylaws
   B. Selection of Board Chairman
5. Report of the Finance, Rates, and Portfolio Committee
   A. Financial Performance Update
   B. Browns Ferry Nuclear Plant Fuel Fabrication Contract
   C. Watts Bar Nuclear Plant Unit 2 Steam Generator Replacement
6. Report of the Nuclear Oversight Committee

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 6, 2014.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2014–03019 Filed 2–7–14; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Performance and Handling Requirements for Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request from the Office of Management and Budget (OMB) approval to renew an information collection. The FAA requires that certain performance information be provided in the Rotorcraft Flight Manual in order to show compliance to the regulatory requirements. The flight manual, by regulation, must be furnished with each aircraft.

DATES: Written comments should be submitted by April 14, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0726.

Title: Performance and Handling Requirements for Rotorcraft.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: In order to determine that a rotorcraft is a safe vehicle, an applicant for a type certificate must show compliance to specific minimum requirements. In order to show compliance, an applicant must substantiate the type design through analysis, testing, design limitations, and other acceptable means. This substantiation requires that certain performance information for safe operation of the rotorcraft be presented, in the form of tables, diagrams, or charts, in the flight manual. FAA engineers and designated engineers review the required data submittals to determine that the rotorcraft complies with the applicable minimum safety requirements for rotorcraft performance and that the rotorcraft has no unsafe features.

Respondents: Approximately 4 normal or transport category rotorcraft certification applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5 hours.

Estimated Total Annual Burden: 2 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on February 5, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–02958 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a generic information collection. As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, FAA has an approved Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.''

DATES: Written comments should be submitted by April 14, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 2120–0746.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Form Numbers: There are no FAA forms associated with this generic information collection.

Type of Review: Renewal of a generic information collection.

Background: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback 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. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Respondents: Approximately 2,813 Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Frequency: Once per request.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 704 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d)

ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on February 5, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2014–02960 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Medical Standards and Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected is used to determine if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought.

DATES: Written comments should be submitted by April 14, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0034.

Title: Medical Standards and Certification.

Form Numbers: FAA forms 8500–7, 8500–8, 8500–14.

Type of Review: Renewal of an information collection.

Background: The Secretary of Transportation collects this information under the authority of 49 U.S.C. 40113; 44701; 44510; 44702; 44703; 44709; 45303; and 80111. Airman medical certification program is implemented by Title 14 Code of Federal Regulations (CFR) parts 61 and 67 (14 CFR parts 61 and 67). Using three forms to collect information, the Federal Aviation Administration (FAA) determines if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought.

Respondents: Approximately 414,300 applicants for airman medical certificates.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: 598,950 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on February 5, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–200.

[FR Doc. 2014–02953 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting: RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems.

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

ACTION: Notice of RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the fourth meeting of RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems.

DATES: The meeting will be held February 28, 2014 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662 or (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems. The agenda will include the following:

Specific Working Group Sessions Before Plenary

February 25–27

All Day, Working Group 1–DAA, MacIntosh–NBAA Room & Colson Board Room. All Day, Working Group 2–C2, ARINC & Hilton–A4A Rooms.

February 28

- Welcome/Introductions/Administrative Remarks/SC–228 Participation Guidelines.
- Agenda Overview.
- Review/Approval of Minutes from Plenary #3 (RTCA Paper No. 007–14/SC228–011).
- Review of RTCA SC–228 Steering Committee Activity.
- SC–228 Terms of Reference—coordination with other SCs.
  - Status of Discussions with SC–147.
- Report from WG–1 for Detect and Avoid progress on the DAA MOPS.
- Report from WG–2 for Command and Control progress on the C2 MOPS.
- Other Business.
- Date, Place and Time of Next Meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 5, 2014.

Paige L. Williams,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2014–02920 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 230, Airborne Weather Detection Systems Committee

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

ACTION: First Meeting Airborne Weather Detection Systems Committee.

SUMMARY: The FAA is issuing this notice to advise the public of the first meeting of the Airborne Weather Detection Systems Committee.

DATES: The meeting will be held March 19 and 20, 2014 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

March 19

- Welcome/Introductions/Administrative Remarks
- Agenda Overview
- RTCA Overview
- Background on RTCA and Process
- Presentations reviewing current airborne radar technology and certification approaches
- SC–230 Scope and Terms of Reference
- SC–230 Structure and Organization of Work.
- Detailed Schedule
- SC Structure—Sub-Groups
- Workspace presentation
- Other Business
- Date and Place of Next Meetings
- Adjourn

March 20

- Continuation of Plenary or Working Group Session

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–02950 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixty-Third Meeting: RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment

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

ACTION: Meeting Notice of RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the Sixty-Third meeting of the RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held March 11–14, 2014 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at Embry-Riddle University, 3700 Willow Creek Road, Prescott, AZ 86301–3720.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Sophie Bousquet, *sbousquet@rtca.org*, 202–330–0663.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 135. The agenda will include the following:

March 11–14

- Chairmen's Opening Remarks, Introductions.
- Introduce FAA Representative.
- Approval of Summary from the Sixty Second Meeting—(RTCA Paper No. 266–13/SC135–695).
- Review open proposal's for User's Guide's.
- Review Working Group Draft's.
- Introduction.
- Section 4, 5, 7, 8, 9, 10, 11, 15, 16, 20, 21, 22, 23, 26.
- Order of Test Clarification.
- DO160G Training/Content discussion.
- New/Unfinished Business.
- Errata Sheet.
- Schedule for Users Guide.
- Establish Date for Next SC–135 Meeting.
- Other Business.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–02922 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 229, 406 MHz Emergency Locator Transmitters (ELTs) Joint With EUROCAE WG–98 Committee

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

ACTION: First Meeting 406 MHz Emergency Locator Transmitters (ELTs) Joint with EUROCAE WG–98 Committee.

SUMMARY: The FAA is issuing this notice to advise the public of the first meeting of the 406 MHz Emergency Locator Transmitters (ELTs) Joint with EUROCAE WG–98 Committee.

DATES: The meeting will be held March 10, 2014 from 10:00am–5:00pm and March 11–12, 2014 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or you may contact Sophie Bousquet, *sobousquet@rtca.org*, 202–330–0663.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

March 10–12

- Welcome/Introductions/ Administrative Remarks
- Agenda Overview
- RTCA Overview
  - Background on RTCA and Process
- Review of ELT 2nd Generation context
  - ''Specifications for new generation ELT''—Philippe Plantin de Hugues, BEA
  - ''Introductory Presentation''—Charisse Green, FAA
  - ''EASA presentation''—Xavier Audouze, EASA
  - ''Analysis of ELT SAR events assisted by Cospas-Sarsat''—Dany Saint-Pierre, COSPAS–SARSAT
  - ''MEOSAR update''—Chris O'Connors, NOAA
  - ''Operational Requirement C/S G.008 update''—Allan Knox, USAF
  - ''Second Generation Beacon efforts to date''—George Theodorakos, NASA
- WG–98 KoM (Nov 26–27, 2013) and ToR overview
- SC–229 Scope and Terms of Reference
- SC–229/WG–98 Structure and Organization of Work
  - Detailed Schedule
  - Workspace presentation
- Review of WG–98 preliminary comments on ED–62A and DO–204A
- Other Business
- Date and Place of Next Meetings
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group Federal Aviation Administration

[FR Doc. 2014–02976 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifteenth Meeting: RTCA Special Committee 222, Inmarsat AMS(R)S

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

ACTION: Meeting Notice of RTCA Special Committee 222, Inmarsat AMS(R)S.

SUMMARY: The FAA is issuing this notice to advise the public of the fifteenth meeting of the RTCA Special Committee 222, Inmarsat AMS(R)S.

DATES: The meeting will be held February 27, 2014 from 1:00 p.m.–5:00 p.m.

ADDRESSES: This meeting is scheduled in conjunction with, and immediately following, the ARINC AGCS meeting, so that individuals with interest in both meetings can easily attend. A Webex/ telephone bridge will be provided.

Please contact Jennifer Iversen (*jiversen@rtca.org*) if you intent to attend in person or remotely. The meeting will be held at Double Tree Annapolis Hotel, 210 Holiday Court, Annapolis, MD 21401, Tel: +1 410 224–3150 Fax: +1 410 571–1123, *www.doubletreeannapolis.com*.

ARINC has negotiated discounted rates at the DoubleTree starting at $94.00 per night plus taxes. Please make reservations by telephone at +1–410–224–3150.

Note: The cut-off date for the $94.00 room rate is February 10, 2014. This meeting is expected to be largely virtual, conducted over Webex with a telephone bridge. Dr. LaBerge and Mr. Robinson will be present at RTCA. Those who plan to attend in person at the RTCA offices should notify Ms. Jennifer Iversen (*jiversen@rtca.org*) by February 17, 2013 to assure that appropriate space is reserved.

FOR FURTHER INFORMATION CONTACT: Jennifer Iversen may be contacted directly at email: *jiversen@rtca.org* or by The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0662/(202) 833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 222. The agenda will include the following:

February 27

- Greetings & Attendance.
- Review summary of June and November meetings (13th and 14th Plenaries).
- Report on the status of the DO–343 MASPS approval process.
- The primary focus of the meeting will be a final review of the draft material for the DO–262 MOPS for SwiftBroadband, and of the changes to DO–262 Iridium-specific material. Both sets of material will have undergone significant pre-FRAC coordination meetings in the last week of January and early February, so there should not be significant additional changes required before passing into the FRAC process. The outcome of the meeting is approval of the SwiftBroadband and Iridium material for release to the formal RTCA Final Review and Comment (FRAC) process.
- Other items as appropriate.
- Schedule for 16th Plenary. The 16th Plenary session will be for the purpose of resolving any comments received during the FRAC process.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–02921 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

36th Meeting: RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services

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

ACTION: Meeting Notice of RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

SUMMARY: The FAA is issuing this notice to advise the public of the thirty-sixth meeting of the RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

DATES: The meeting will be held March 10–14, 8:30 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at National Weather Service Training Center, 7220 NW 101st Terrace, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org* or Sophie Bousquet, *sbousquet@rtca.org*, 202–330–0663.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 206. The agenda will include the following:

March 10

1:00 p.m.

- Opening remarks: Chairman, DFO and Host.
- Review and approval meeting agenda.
- SC–206 action item review.
- Approval of previous (McLean) meeting minutes.
- Sub-Groups status and week's plan.
- Industry Presentations.

3:00 p.m.

- Sub-Group Meetings.

March 11&12

8:30 a.m.

- Sub-Groups meetings.

10:00 a.m.

- SG4: SE2020 Eddy Dissipation Rate (EDR) Turbulence Project Update on March 11.

1:00 p.m.

- Tour of AWC on March 11 & 12.

March 13

8:30 a.m.

- SG–4 DO–252 Update Document Review.

1:00 p.m.

- Plenary: SG–4 DO–252 Update Document Review (if needed).
  - Alternative: Sub-Group Meetings.

March 14

8:30 a.m.

- Closing Plenary.
  - Sub-Groups reports.
  - Decision to release DO–252 Update for FRAC.
- Action item review.
- Future meeting plans and dates.
- Industry Coordination & Presentations.
- Other business.

11:30 a.m.

- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 5, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–02923 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0017]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated January 22, 2014, Caltrain Commuter Railroad Company (PCMZ) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236, Rules, Standards, and Instructions Governing the Installation Inspection and Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances. FRA assigned the petition Docket Number FRA–2014–0017. PCMZ seeks relief from the 2-year periodic testing requirements of 49 CFR part 236, Sections 236.377—*Approach locking;* 236.378—*Time locking;* 236.379—*Route locking;* 236.380—*Indication locking;* and 236.381—*Traffic locking;* on vital microprocessor-based systems. PCMZ proposes to verify and test signal locking systems controlled by microprocessor-based equipment using alternative procedures every 4 years after the initial baseline testing or a program change as follows:

- Verify the cyclic redundancy check, checksum, and universal control number of the existing location's specific application logic to the previously tested version.
- Test the appropriate interconnection to the associated signaling hardware equipment outside the processor (switch, track, and searchlight signal indications, and approach locking (if external)) verifying that the correct and intended inputs to and outputs from the processor are maintained.

PCMZ submitted their petition with a list of 30 signal locations subject to the relief being requested.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov/* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's

complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02870 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0145]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 20, 2013, Mr. Burt Mall, Partner of 1003 Operations LLP, and Mr. Zachary Hall, mechanical manager, Steam Locomotive Heritage Association (SLHA), have jointly petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215, Railroad Freight Car Safety Standards; Part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses; and Part 224, Reflectorization of Rail Freight Rolling Stock. FRA assigned the petition Docket Number FRA–2013–0145.

Mr. Mall owns Soo Line Steam Locomotive #1003 and several historic cars (specifically, Box Car LLTX 10559, Caboose LLTX 2012, and Caboose LLTX 238). This petition is for these three cars. Mr. Mall leases the equipment to SLHA. SLHA, based in Hartford, WI, is a 501(c)(3) non-profit organization created to reconstruct, maintain, and display steam locomotives and associated historic railroad equipment for educational purposes. SLHA controls the operation and maintenance of the leased equipment.

The petitioners state that while Mr. Mall has owned these cars, their use has been restricted. The cars have not been interchanged in regular freight operations with other railroads. The primary use of the cars is transporting equipment and crews in support of Steam Locomotive #1003. At no time are the cars used to transport passengers or freight in revenue service. SLHA also at times receives inquiries for the operation of historic demonstration trains using the cars and Steam Locomotive #1003. The purposes of these trains are for photography, historic documentation, film production, and community involvement.

The petitioners further state that the operation of the equipment is primarily confined to Wisconsin and Southern Railroad (WSOR) trackage (although in the future, SLHA may operate on other railroads). The equipment is operated at a maximum speed of 49 mph on WSOR trackage. In addition, the equipment is moved under the direction of the mechanical manager or a qualified SLHA member during deadhead or light equipment moves. The maximum load that each car would be permitted to carry, if any, is provided in Exhibit A attached to the petition letter. Each car is inspected and maintained on a regular basis by qualified car inspectors and mechanics to ensure safe operations under the conditions of use.

The petitioners request that the stenciling requirement in 49 CFR 215.303, *Stenciling of restricted cars,* and the reflectorization requirements in 49 CFR part 224 be waived for Box Car LLTX 10559, Caboose LLTX 2012, and Caboose LLTX 238. In addition, the petitioners request that the glazing requirement of 49 CFR 223.13, *Requirements for existing cabooses,* be waived for the two cabooses, LLTX 2012 and LLTX 268.

As information, the petitioners have also requested a Special Approval to continue in service the above-mentioned three cars in accordance with 49 CFR 205.203(c).

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02869 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0010]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 19, 2013, the Sonoma-Marin Area Rail Transit District (SMART), owner of 77 miles of former Northwestern Pacific Railroad Company trackage in Marin, Sonoma, and Napa Counties, CA, has petitioned the Federal Railroad Administration (FRA) for a reconsideration of an approval condition on the Brazos Drawbridge at Milepost 64.7. SMART asked FRA to reconsider Condition 4 of FRA–2008–0010, granted on February 24, 2009, which states, ''Approval is for freight movements only and shall be revisited prior to any passenger operations.''

SMART, Amtrak, and the Capitol Corridor Joint Powers Authority are asking for an exception to the condition cited above to permit the operation of two round-trip, chartered Amtrak passenger trains over the Brazos Drawbridge to Sonoma Raceway on

Sunday, June 22, 2014, for a NASCAR Special, and on Sunday, August 24, 2014, for an Indy Car Special. The two passenger trains are an 11-car train from and to Sacramento, CA, and a 5-car train from and to San Jose, CA.

FRA previously granted an exception to the condition cited above to allow a chartered Amtrak special train a 1-day movement on June 23, 2013, over the Brazos Drawbridge while operating between Sacramento and Sonoma Raceway. That special train was considered a great success, and the Sonoma Raceway has requested SMART's cooperation in arranging for the operation of two special trains on June 22, 2014, as well as two special trains on August 24, 2014.

The intended operating route of these special trains is from Sacramento and San Jose on the Union Pacific Railroad to Suisun-Fairfield, via the California Northern Railroad from Suisun-Fairfield to Brazos Junction, and over SMART trackage from Brazos Junction over the Brazos Drawbridge to Sonoma Raceway and return.

As in 2013, a specific operating plan will be in place to ensure correct operation of the Brazos Drawbridge and the safety of train operations, equipment, passenger boarding and alighting, staffing, and raceway access and egress.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02863 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0128]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated October 9, 2013, the National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR chapter II, subtitle B . The request was assigned Docket Number FRA–2013–0128.

Amtrak would like to increase Acela trainset maximum authorized speeds (MAS) on its Northeast Corridor (NEC) in limited locations (in Rhode Island from Kingston Milepost 154.3 to Warwick Milepost 171.7) from 150 mph to 160 mph. As part of this gradual process to safely increase Acela speeds, Amtrak is requesting permission from FRA to permanently waive certain provisions of 49 CFR Chapter II, Subtitle B, particularly the provisions of the Advanced Civil Speed Enforcement System (ACSES) Final Order of Particular Applicability, which was issued on July 22, 1998 [FRA Docket No. 87–2, Notice No.7], for this single location.

In 1998, FRA issued an Order of Particular Applicability requiring all trains operating on the NEC between New Haven, CT, and Boston, MA (NEC–North End), to be equipped to respond to Amtrak's ACSES as a supplement to its Automatic Train Control (ATC) system. In response, Amtrak installed a system designed to enforce civil speed restrictions, both permanent and temporary, and to enforce a positive stop at interlocking home signals. This system was installed and placed in service beginning in 2000 with the startup of premium Acela service. At the same time that ACSES was installed, additional cab signal codes and aspects were provided to support higher speed operations for civil speed enforcement. The combination of ACSES and the existing ATC system, supported by the underlying traffic control system, provided the core requirements of a Positive Train Control system. The ATC system enforces all speeds associated with the signal system preventing train-to-train collisions (49 CFR 236.1005(a)(1)(i)), and the ACSES system prevents trains from passing stop signals at interlocking home signals. ACSES enforces all permanent civil speed restrictions and temporary restrictions (slow orders), thereby preventing overspeed derailments (49 CFR 236.1005(a)(1)(ii)). With time, improvements have been made to the initial ACSES configuration to expedite train movements at home signals and obviate the need for placement of temporary transponders. The current configuration of this technology is known as ACSES II.

As part of its risk and hazard assessment, Amtrak recognizes that the safety of the signal and train control system must be established. ACSES and Amtrak's nine-aspect cab signal/ATC system are presently configured to enforce relevant signals, as well as permanent and temporary speed restrictions, by equipment class. Modifications to the transponder database will be required and existing transponders will be reprogrammed through the affected area. It will be necessary to demonstrate that both systems function as intended through testing designed to validate and verify the modifications. This includes reading transponders and receiving cab signal code at the higher speeds. Furthermore, analysis and testing will be required to associate stopping distances from MAS with existing signal spacing based on all relevant factors. Amtrak will initially seek to gain approval of a test plan for this activity under 49 CFR 236.1035.

When the test plan has been successfully completed, Amtrak will make the necessary filings under 49 CFR Part 263 (Subpart I) to obtain safety certification of the newly configured system. Amtrak assumes that successful completion of this work will be a condition on any relief provided under this request becoming effective.

This initial step of modifying the provisions of the ACSES Final Order of Particular Applicability will allow Amtrak the ability to collect relevant real-time data as it demonstrates that its Acela operation at a MAS of 160 mph is safe and viable. Amtrak is hoping that increased MAS for Acela service will make better use of limited resources while reducing trip times for NEC riders and will help to build ridership and market share.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2013–0128) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02865 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0021]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations, this document provides the public notice that by a letter dated January 16, 2014, Columbia Business Center Railroad (CBCX) has petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2012–0021.

In its petition, CBCX seeks relief from 49 U.S.C. 21103(a)(4), which in part requires a train employee to receive 48 hours off duty after initiating an on-duty period for 6 consecutive days. Specifically, CBCX seeks a waiver to allow a train employee to initiate an on-duty period, each day, for 6 consecutive days followed by 24 hours off duty. In support of its request, CBCX explained that employees covered by the waiver work Monday through Friday, from 7:30 a.m. to 4:30 p.m., with a crew occasionally working on Saturday for 4 hours or less. CBCX also explained that all employees covered by the waiver work well below the Federal 276-hour monthly limit, and since the waiver was granted, no train employee has exceeded 210 hours in any month. Finally, CBCX said that all employees covered by the waiver were provided information about the waiver extension petition, and that there were no objections to the waiver extension by these employees.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02864 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0134]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 19, 2013, the Reading Blue Mountain and Northern Railroad (RBMN) has petitioned the Federal

Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 230–Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2013–0134. RBMN owns and operates No.425, a 4–6–2 Pacific class steam locomotive built in 1928 by the Baldwin Locomotive Works for the Gulf, Mobile, and Ohio Railroad. RBMN No. 425 is operated periodically for special trains on RBMN.

RBMN requests relief from 49 CFR 230.16(a)(2), *Fifth annual inspection,* with respect to 49 CFR 230.41, *Flexible staybolts with caps.* Specifically, RBMN is petitioning for a delay of the flexible staybolt and cap inspection for an undetermined amount of calendar days until RBMN No. 425 has accumulated 200 service days. Inclusive of the 2013 operating season, RBMN No. 425 will have accumulated 125 service days since the 1,472 service-day inspection was performed in December 2007. RBMN states that the flexible staybolt and cap inspection required by 49 CFR 230.41 would require 14 man-weeks to perform and be a burden on the RBMN steam program.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02866 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0143]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated December 11, 2013, Mr. Ray Kolasa, a private owner of a Penn Central Transfer Caboose, Car Number 18216, petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 215, Railroad Freight Car Safety Standards. FRA assigned the petition Docket Number FRA–2013–0143.

Mr. Kolasa seeks relief for the caboose from 49 CFR 215.303, *Stenciling of restricted cars,* which requires that restricted railroad freight cars shall be stenciled or marked in clearly legible letters with the letter ''R.'' The caboose was built in 1948 and is more than 50 years old from its original date of construction, and therefore is restricted per 49 CFR 215.203(a), *Restricted cars.* Mr. Kolasa states that stenciling of this car would distract from the historical image. Mr. Kolasa also requests Special Approval for continued operation of the same car in accordance with 49 CFR 215.203(c).

Mr. Kolasa further states that this car was converted to carry passengers and will be used for tourist attractions and historical purposes. This car will not be interchanged in regular freight operations. Additionally, Mr. Kolasa states that this car will be serviced, inspected, and maintained in compliance with all applicable regulations with the exception of the conditions that require special approvals.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice*

for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02867 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0144]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated November 25, 2013, Buffalo & Pittsburgh Railroad (BPRR) and Norfolk Southern Railway (NS) jointly petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0144.

Applicants:

Buffalo & Pittsburgh Railroad, Mr. Raymond A. Goss, Senior Vice President, Northeast Region, Genesee & Wyoming, 400 Meridian Centre, Suite 330, Rochester, NY 14618.

Norfolk Southern Corporation, Mr. Brian Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

BPRR and NS jointly seek approval of the proposed discontinuance of the traffic control system (TCS) on the main track and controlled siding between West Seneca, NY, Milepost (MP) BR 8.8, and Machias, NY, MP 44.7, on the Machias Subdivision. Controlled signals at Control Points (CP) Machias (MP 44.5), CP Perry (MP 25.0), and CP Wales (MP 22.0) will be discontinued. Intermediate signals #12, #15, #18, #27, #33, #37, and #40 will be discontinued. Power-operated switches at CPs will be converted to hand operation. Derails will be installed at the end of the siding at CP Wales and CP Perry. BPRR will maintain an approach signal to CP Gravity (MP 10.5).

The reasons given for the proposed changes are to improve the efficiency of operation, that the TCS is no longer needed due to reduced train traffic, and that there are no longer opposing moves or fleeted traffic with following moves.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Communications received by March 28, 2014 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2014–02868 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0014]

Pipeline Safety: Public Workshop on Safety Management Systems

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing a one-day public workshop to discuss a rapidly evolving safety management system (SMS) national consensus standard. At this workshop, diversely comprised panels will discuss key concepts underlying this standard. This workshop will be webcast with an opportunity for attendees and viewers to pose questions to the panelists and moderators. Four panels will present their experience with SMS from industries outside the energy pipeline world including aviation, chemical, nuclear, and health care. Panels will address the role and value of SMS, the role of leadership at the top through the lower ranks in making SMS work, the value of ''safety assurance'', and the growing recognition of the role of safety culture in ensuring attainment of key safety objectives.

DATES: The public workshop will held on Thursday, February 27, 2014, from 8:00 a.m. to 4:30 p.m. e.s.t. Written comments must be received by April 14, 2014.

ADDRESSES: The workshop will be held at the Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203, in the Fitzgerald rooms AB. Hotel reservations under the ''United States Department of Transportation—Workshop and Advisory Committee Meetings'' room block, can be made at 703–717–6200. Advisory committee members and speakers have priority for reservations in the block.

The meeting agenda and any additional information will be published on the PHMSA home page Web site at (*http://www.phmsa.dot.gov/public*), under ''Latest News'' and on the PHMSA meeting page Web site at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=96*).

Registration: Members of the public may attend this free workshop. To help assure that adequate space is provided, all attendees are encouraged to register for the workshop in advance at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=96.*

Comments: Members of the public may also submit written comments

either before or after the workshop. Comments should reference Docket No. PHMSA–2014–0014. 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 9:00 a.m. and 5:00 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 19476).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Nancy White, Office of Pipeline Safety, at 202–366–1419 or by email at *nancy.white@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Nancy White, Office of Pipeline Safety, at 202–366–1419 or by email at *nancy.white@dot.gov*, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The details on this meeting, including the location, times, and agenda items, will be available on the meeting page (*https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=96*) as they become available. Please note that the public workshop will be webcast. Attendees, both in person and by web cast, are strongly encouraged to register to help ensure accommodations are adequate.

Presentations will be available online at the meeting page and also be posted in the E-Gov Web site: *http://www.regulations.gov,* at docket number PHMSA–2014–0014 within 30 days following the meeting.

Authority: 49 CFR 1.97.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2014–02855 Filed 2–10–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Proposed Data Collection; Comment Request

AGENCY: Community Development Financial Institutions Fund, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The U.S. 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 Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning the Secondary Loan Monitoring Report, Financial Condition Monitoring Report, and Program Impact Monitoring Report for the CDFI Bond Guarantee Program. These reporting forms propose the collection of vital financial performance data and program related information for institutions participating in the CDFI Bond Guarantee Program consistent with the requirements for Portfolio Management and Loan Monitoring (PMLM) and pursuant to 12 CFR part 1808 (Interim Rule). The process for data collection and reporting is expected to take place via electronic submission to the CDFI Fund pending the implementation of an electronic submission process. Hard copies will also be accepted. The reporting forms for the CDFI Bond Guarantee Program may be obtained from the CDFI Bond Guarantee Program page of the CDFI Fund's Web site at *http://www.cdfifund.gov.* Unless otherwise defined in this notice, the capitalized terms herein are as defined in the Interim Rule.

DATES: Written comments should be received on or before April 14, 2014 to be assured of consideration. These comments will be considered before the CDFI Fund submits a request for Office of Management and Budget (OMB) review of the data reporting forms described in this notice.

ADDRESSES: Direct all comments to Lisa Jones, CDFI Bond Guarantee Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020 by email to *bgp@cdfi.treas.gov* or by facsimile to (202) 508–0083. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The Secondary Loan Monitoring Report, Financial Condition Monitoring Report, and Program Impact Monitoring Report, may be obtained from the CDFI Bond Guarantee Program page of the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Lisa Jones, CDFI Bond Guarantee Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20020 by email to *bgp@cdfi.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: CDFI Bond Guarantee Program Reporting Forms.

OMB Number: 1559–0044.

Abstact: The purpose of the CDFI Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued by Qualified Issuers as part of a Bond Issue for Eligible Community or Economic Development Purposes. The CDFI Bond Guarantee Program provides CDFIs with a new source of long-term capital and furthers the mission of the CDFI Fund to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States. The CDFI Fund achieves its mission by promoting access to capital and local economic growth by investing in, supporting, and training CDFIs.

The CDFI Fund held two-day application workshops on June 18–19, 2013 and June 20–21, 2013 in Washington, DC. During these workshops, representatives of the Bond Guarantee Program met with potential applicants regarding the FY 2013 Qualified Issuer and Guarantee Application requirements. Specifically, the workshops explored the financial structure of the program, including roles

of the Qualified Issuer, Program Administrator, and Servicer; reporting requirements; and compliance-related activities. Although participants in these workshops expressed overall enthusiasm and support for conforming to the CDFI Fund's reporting process, they noted a lack of substantive data in this area and recommended that the CDFI Fund describe and specify its post-issuance information collection practices for the CDFI Bond Guarantee Program.

In compliance with OMB Circular A–129, the CDFI Bond Guarantee Program will collect all necessary information to manage the portfolio effectively and track progress towards policy goals. The proposed reporting forms will add significantly to the Department of the Treasury's review and impact analysis on the use of Bond Proceeds in underserved communities and support the CDFI Fund in proactively managing portfolio risks and performance. Risk detection and mitigation are crucial activities for the long-term operation and viability of the CDFI Bond Guarantee Program. The Department of the Treasury's authority to collect this information and the specified data collection areas and parameters are consistent with the annual and periodic financial reporting requirements for the CDFI Bond Guarantee Program as defined in 12 CFR 1808.619 of the Interim Rule.

The CDFI Fund currently utilizes its Community Investment Impact System (CIIS), which collects data from CDFIs that have received monetary awards from the CDFI Fund through several of its other programs. CDFI Program and Native American CDFI Assistance (NACA) Program awardees are required to report total portfolio and financial data for three years. However, there is no standardized data on the full universe of Certified CDFIs, especially unregulated loan funds that do not have award reporting history. Moreover, non-regulated Certified CDFIs frequently utilize disparate accounting methodologies and report certain data points, such as borrower defaults and delinquencies, in ways that are difficult to compare across organizations. Nonprofit Certified CDFIs are yet more difficult to compare due to the variety of reporting options available to nonprofit institutions under generally accepted accounting principles (GAAP). The proposed reports of the CDFI Bond Guarantee Program address this challenge in standardized data collection and allow Certified CDFIs to: (i) Demonstrate the ability to deploy long-term debt successfully with reporting requirements similar to those required of regulated financial institutions; (ii) provide a mechanism for accurately assessing Certified CDFI credit risk; and (iii) provide capital markets with a record of accomplishment on which to base future lending and investment.

Current Actions: New collection.

Type of Review: Regular review.

Affected Public: Secondary borrowers, certified CDFIs, and qualified issuers.

Estimated Number of Secondary Borrower Respondents: 75

Estimated Annual Time per Secondary Borrower Respondent: 5 hours.

Estimated Number Certified CDFI Respondents: 10.

Estimated Annual Time per Certified CDFI Respondent: 35 hours.

Estimated Number of Qualified Issuer Respondents: 10.

Estimated Annual Time Per Qualified Issuer Respondent: 50 hours.

Estimated Total Annual Burden Hours: 1225 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund Web site at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is consistent with the stated background and proposed use necessary for the proper performance of the functions of the CDFI Fund; (b) the accuracy of the CDFI Fund'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 technology; and (e) estimates of operational or maintenance costs to provide information.

Because standardized information collection similar to the reporting requirements of regulated financial institutions will provide a more complete picture of program impact and risk and prepare CDFIs for access to mainstream capital markets, the CDFI Fund proposes that the collection of information be directed to address the following questions:

(1) How are Eligible CDFIs performing in comparison with their Capital Distribution Plans and the requirements of the CDFI Bond Guarantee Program?

(2) How does the Secondary Lending activity increase economic opportunity and promote community development investments for underserved populations and distressed communities in the United States?

(3) What types of Secondary Lending are more prevalent both across and within distinct geographical Investment Area(s)? What are the trends and impact of such lending?

(4) What types of borrower entities (based on the compilation of race, ethnicity, and other customer profile and socioeconomic information) utilize the products and services of Eligible CDFIs? Which members of Targeted Population(s) and/or Investment Areas(s) are being served? What are the trends and impact of such lending?

(5) What types of risk are being introduced to the Bond portfolio based on the payment history of Secondary Loans and Secondary Borrowers?

(6) What are the financial conditions of Eligible CDFIs and what is the result of their operations?

(7) Are Eligible CDFIs mitigating their financial risks and demonstrating compliance with the financial terms and conditions of their respective Bond Loan agreements?

Authority: 12 CFR part 1808.

Dated: February 5, 2014.

Dennis Nolan,

Deputy Director, Community Development Financial Institutions Fund.

[FR Doc. 2014–02882 Filed 2–10–14; 8:45 am]

BILLING CODE 4810–70–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—February 21, 2014, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Dennis C. Shea, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 21, 2014, ''US-China Economic Challenges.''

Background: This is the second public hearing the Commission will hold during its 2014 report cycle to collect input from academic, industry, and

government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The hearing will examine challenges to the U.S. economy from Chinese competition in manufacturing and state owned enterprises (SOEs). In addition, this hearing will assess problems with trade law enforcement and negotiations with China. The hearing will be co-chaired by Commissioners Michael R. Wessel and Daniel M. Slane. Any interested party may file a written statement by February 21, 2014, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: Dirksen Senate Office Building, Room 608. Friday, February 21, 2014, 9:00 a.m.–3:00 p.m. Eastern Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *www.uscc.gov*. Also, please check our Web site for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Reed Eckhold, 444 North Capitol Street NW., Suite 602, Washington DC 20001; phone: 202–624–1496, or via email at *reckhold@uscc.gov*. *Reservations are not required to attend the hearing.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: February 6, 2014.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2014–02946 Filed 2–10–14; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0028]

Proposed Information Collection (Application of Service Representative for Placement on Mailing List; Request for and Consent To Release of Information From Claimant's Records; Request to Correspondent for Identifying Information; and 38 CFR 1.519(A) Lists of Names and Addresses); Comment Request

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (IT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information used by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed from service organizations requesting to be placed on VA's mailing lists for specific publications; to request additional information from the correspondent to identify a veteran; to request for and consent to release of information from claimant's records to a third party; and to determine an applicant's eligibility to receive a list of names and addresses of Veterans and their dependents.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 14, 2014.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Martin L. Hill, Office of Information and Technology (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *martin.hill@va.gov.* Please refer to ''2900–0028'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Martin L. Hill (202) 632–7452.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, IT invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of IT's functions, including whether the information will have practical utility; (2) the accuracy of IT's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215.

b. Request for and Consent to Release of Information from Claimant's Records, VA Form 3288.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2.

d. 38 CFR 1.519(A) Lists of Names and Addresses.

OMB Control Number: 2900–0028.

Type of Review: Revision of a currently approved collection.

Abstract:

a. VA operates an outreach services program to ensure Veterans and beneficiaries have information about benefits and services to which they may be entitled. To support the program, VA distributes copies of publications to Veterans Service Organizations' representatives to be used in rendering services and representation of veterans, their spouses and dependents. Service organizations complete VA Form 3215 to request placement on a mailing list for specific VA publications.

b. Veterans or beneficiaries complete VA Form 3288 to provide VA with a written consent to release his or her records or information to third parties such as insurance companies, physicians and other individuals.

c. VA Form Letter 70–2 is used to obtain additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify a Veteran. VA personnel use the information to identify the Veteran, determine the location of a specific file, and to accomplish the action requested by the correspondent such as processing a benefit claim or file material in the individual's claims folder.

d. Title 38 U.S.C. 5701(f)(1) authorized the disclosure of names or addresses, or both of present or former members of the Armed Forces and/or their beneficiaries to nonprofit organizations (including members of Congress) to notify Veterans of Title 38 benefits and to provide assistance to Veterans in obtaining these benefits. This release includes VA's Outreach Program for the purpose of advising Veterans of non-VA Federal State and local benefits and programs.

Affected Public: Individuals or households, Not for profit institutions, and State, local or tribal government.

Estimated Annual Burden:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—25 hours.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—18,875 hours.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—3,750 hours.

d. 38 CFR 1.519(A) Lists of Names and Addresses—50 hours.

Estimated Average Burden Per Respondent:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—10 minutes.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—7.5 minutes.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—5 minutes.

d. 38 CFR 1.519(A) Lists of Names and Addresses—60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Application of Service Representative for Placement on Mailing List, VA Form 3215—150.

b. Request for and Consent to Release of Information From Claimant's Records, VA Form 3288—151,000.

c. Request to Correspondent for Identifying Information, VA Form Letter 70–2—45,000.

d. 38 CFR 1.519(A) Lists of Names and Addresses—50.

Dated: February 6, 2014.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–02916 Filed 2–10–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Amendment of System of Records ''National Patient Databases-VA'' (121VA10P2).

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''National Patient Databases-VA'' (121VA10P2) as set forth in 77 FR 27863. VA is amending the system of records by revising the Categories of Records in the System, Purposes, Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, System Manager and Address, Notification Procedure, and Record Access Procedure, Records Source Categories and Appendix 4. VA is republishing the system notice in its entirety.

DATES: Comments on this new system of records must be received no later than March 13, 2014. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective March 13, 2014.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted through *www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, 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 may be viewed online through the Federal Docket Management System at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Stephania H. Griffin, Privacy Officer, Veterans Health Administration (VHA), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION:

Background: VHA is the largest health care provider in the country. VHA collects health care information from its local facilities to evaluate quality of services, clinical resource utilization, and patient safety, as well as to distribute medical information, such as alerts or recalls, track specific diseases, and monitor patients. National-level information is also needed for other activities, such as medical research and the development of National Best Clinical Practice Guidelines and National Quality Standards. VHA gathers this information from a wide variety of sources, including directly from Veterans; from information systems located at VHA medical centers, Veterans Integrated Service Networks (VISN), other VHA facilities, such as the Health Eligibility Center; and Federal departments and agencies such as the U.S. Department of Defense (DoD) and the Food and Drug Administration. As the data is collected, VHA stores it in several national patient databases.

The Categories of Records in the System and the Records Source Categories are being amended to change 24VA19 to 24VA10P2.

The purpose of this system of records is being amended to state that Healthcare Associated Infections and Influenza Surveillance System (HAIISS) data is available to VHA clinicians for the monitoring of, among other things, influenza, emerging infectious diseases or syndromes associated with natural and or bioterrorist activities, pathogen resistance to antimicrobials, and healthcare-associated infections (HAI). Data is also available for transmittal to state/local/Federal public health authorities for reportable diseases, biosurveillance, and Health Information Technology for Economic and Clinical Health Act Meaningful Use requirements purposes.

Routine use 26 has been added to state that health care information may be disclosed to the Food and Drug Administration (FDA), or a person subject to the jurisdiction of the FDA, with respect to FDA-regulated products for purposes of reporting adverse events, product defects or problems, or biological product deviations; tracking products; enabling product recalls, repairs, or replacements; and/or conducting post marketing surveillance.

System Manager and Address, Notification Procedure, and Record Access Procedure are being amended to change from the Austin Automation Center to the Austin Information Technology Center.

Appendix 4 has been amended to remove the Corporate Data Warehouse; Regional Data Warehouses; and Veterans Informatics and Information Computing Infrastructure, which are now located in the Corporate Data Warehouse-VA (172VA10P2), Appendix A. The Electronic Surveillance System for the Early Notification of Community-Based Epidemics is being removed from the Appendix. Master Patient Index is being changed to Master Veteran Index. Also, the Homeless Veterans Registry is

being amended to reflect a change in address to Austin Information Technology Center, 1615 Woodward Street, Austin, Texas, 78772.

The notice of amendment and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

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, Department of Veteran Affairs, approved this document on January 23, 2014, for publication.

Dated: February 6, 2014.

Robert C. McFetridge,

Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

121VA10P2

SYSTEM NAME:

National Patient Databases-VA.

SYSTEM LOCATION:

Records are maintained at VA medical centers, VA data processing centers, VISNs and Office of Information field offices. Address location for each VA national patient database is listed in VA Appendix 4 at the end of this document.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records contain information for all individuals (1) Receiving health care from VHA, and (2) Providing the health care. Individuals encompass Veterans and their immediate family members, members of the Armed Services, current and former employees, trainees, contractors, subcontractors, consultants, volunteers, and other individuals working collaboratively with VA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information and health information related to:

1. Patient medical record abstract information including, but not limited to, information from Patient Medical Record—VA (24VA10P2).

2. Identifying information (e.g., name, birth date, death date, admission date, discharge date, gender, Social Security number, taxpayer identification number); address information (e.g., home and/or mailing address, home telephone number, emergency contact information such as name, address, telephone number, and relationship); prosthetic and sensory aid serial numbers; medical record numbers; integration control numbers; information related to medical examination or treatment (e.g., location of VA medical facility providing examination or treatment, treatment dates, medical conditions treated or noted on examination); information related to military service and status;

3. Medical benefit and eligibility information;

4. Patient workload data such as admissions, discharges, and outpatient visits; resource utilization such as laboratory tests, x-rays;

5. Patient Satisfaction Survey Data which include questions and responses;

6. External Peer Review Program (EPRP) data capture;

7. Online Data Collection system supported by Northeast Program Evaluation Center and VHA Support Service Center to include electronic information from all Veteran homeless programs and external sources; and

8. Clinically oriented information associated with My HealtheVet such as secure messages.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 501.

PURPOSES:

The records and information may be used for statistical analysis to produce various management, workload tracking, and follow-up reports; to track and evaluate the ordering and delivery of equipment, services, and patient care; for the planning, distribution, and utilization of resources; to monitor the performance of VISNs; and to allocate clinical and administrative support to patient medical care. The data may be used for VA's extensive research programs in accordance with VA policy. In addition, the data may be used to assist in workload allocation for patient treatment services including provider panel management, nursing care, clinic appointments, surgery, prescription processing, diagnostic and therapeutic procedures; to plan and schedule training activities for employees; for audits, reviews, and investigations conducted by the network directors office and VA Central Office; for quality assurance audits, reviews, and investigations; for law enforcement investigations; and for personnel management, evaluation and employee ratings, and performance evaluations. Survey data will be collected for the purpose of measuring and monitoring national, VISN, and facility-level performance on VHA's Veteran Health Care Service Standards (VHSS) pursuant to Executive Order 12862 and VHA Customer Service Standards Directive. The VHSS are designed to measure levels of patient satisfaction in areas that patients have defined as important in receiving quality, patient-centered health care. Results of the survey data analysis are shared throughout the VHA system. The EPRP data are collected in order to provide medical centers and outpatient clinics with diagnosis and procedure-specific quality of care information. EPRP is a contracted review of care, specifically designated to collect data to be used to improve the quality of care. The Veteran Homeless records and information will be used for case management in addition to statistical analysis to produce various management, workload tracking, and follow-up reports; to track and evaluate the goal of ending Veteran homelessness. HAIISS data will be available to VHA clinicians to use for the monitoring of health care-associated infections and for the transmittal of data to state/local health departments for biosurveillance purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus; information protected by 38 U.S.C. 5705, i.e., quality assurance records; or information protected by 45 CFR Parts 160 and 164, i.e., individually identifiable health information, such information cannot be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure. VA may disclose protected health information pursuant to the following routine uses where required or permitted by law.

1. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or

charged with enforcing or implementing the statute, regulation, rule, or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule, or order issued pursuant thereto.

2. Disclosure may be made to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested), when necessary to obtain or provide information relevant to an individual's eligibility, care history, or other benefits across different Federal, state, or local, public health, health care, or program benefit agencies that improves the quality and safety of health care for our Veterans.

3. Disclosure may be made to a Federal agency in the executive, legislative, or judicial branch, State and local Government or the District of Columbia government in response to its request or at the initiation of VA, in connection with disease tracking, patient outcomes, or other health information required for program accountability.

4. Disclosure may be made to the National Archives and Records Administration and the General Services Administration for records management inspections under authority of Title 44, Chapter 29, of the United States Code.

5. VA may disclose information in this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

6. Records from this system of records may be disclosed to a Federal agency or to a state or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity that maintains records concerning individuals' employment histories or concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee.

7. Records from this system of records may be disclosed to inform a Federal agency, licensing boards, or appropriate non-governmental entities about the health care practices of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews but only to the extent that the information is necessary and relevant to the review.

9. Disclosure may be made to a national certifying body that has the authority to make decisions concerning the issuance, retention, or revocation of licenses, certifications, or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the national certifying body for the purpose of making a decision concerning the issuance, retention, or revocation of the license, certification, or registration of a named health care professional.

10. Records from this system that contain information listed in 5 U.S.C. 7114(b)(4) may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

11. Disclosure may be made to the representative of an employee of all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for duty) examination procedures or Department-filed disability retirement procedures.

12. VA may disclose information to officials of the Merit Systems Protection Board, or the Office of Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

13. VA may disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law or regulation.

14. VA may disclose information to the Federal Labor Relations Authority (including its General Counsel) information related to the establishment of jurisdiction, the investigation and resolution of allegations of unfair labor practices, or information in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; to disclose information in matters properly before the Federal Services Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

15. Disclosure of medical record data, excluding name and address, unless name and address are furnished by the requester, may be made to non-Federal research facilities for research purposes determined to be necessary and proper when approved in accordance with VA policy.

16. Disclosure of name(s) and address(s) of present or former personnel of the Armed Services, and/or their dependents, may be made to: (a) a Federal department or agency, at the written request of the head or designee of that agency; or (b) directly to a contractor or subcontractor of a Federal department or agency, for the purpose of conducting Federal research necessary to accomplish a statutory purpose of an agency. When disclosure of this information is made directly to a contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

17. Disclosure may be made to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a

contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has an agreement or contract to perform the services of the contract or agreement. This routine use includes disclosures by the individual or entity performing the service for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

18. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

19. VA may disclose information to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and the VHA Office of Information has determined prior to the disclosure that VHA data handling requirements are satisfied.

20. Disclosure of limited individual identification information may be made to another Federal agency for the purpose of matching and acquiring information held by that agency for VHA to use for the purposes stated for this system of records.

21. VA may, on its own initiative disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

22. On its own initiative, VA may disclose to the general public via an Internet Web site, Primary Care Management Module information, including the names of its providers, provider panel sizes and reports on provider performance measures of quality when approved in accordance with VA policy.

23. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

24. VA may disclose names and addresses of present or former members of the Armed Services and/or their dependents under certain circumstances: (a) to any nonprofit organization, if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, or (b) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such organization, agency, or instrumentality has made a written request for such names or addresses for a purpose authorized by law, provided that the records will not be used for any purpose other than that stated in the request and that the organization, agency, or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

25. VA may disclose information, including demographic information, to U.S. Department of Housing and Urban Development (HUD) for the purpose of reducing homelessness among Veterans by implementing the Federal strategic plan to prevent and end homelessness and by evaluating and monitoring the HUD-Veterans Affairs Supported Housing program.

26. VA may disclose health care information to the Food and Drug Administration (FDA), or a person subject to the jurisdiction of the FDA, with respect to FDA-regulated products, for purposes of reporting adverse events; product defects or problems, or biological product deviations; tracking products; enabling product recalls, repairs, or replacements; and/or conducting post marketing surveillance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media including magnetic tape, disk, laser optical media.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to and use of national patient databases are limited to those persons whose official duties require such access, and VA has established security procedures to ensure that access is appropriately limited. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA provides information security training to all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality.

2. VA maintains Business Associate Agreements and Non-Disclosure Agreements with contracted resources in order to maintain confidentiality of the information.

3. Physical access to computer rooms housing national patient databases is restricted to authorized staff and protected by a variety of security devices. Unauthorized employees, contractors, and other staff are not allowed in computer rooms. The Federal Protective Service or other security personnel provide physical security for the buildings housing computer rooms and data centers.

4. Data transmissions between operational systems and national patient databases maintained by this system of record are protected by state-of-the-art telecommunication software and hardware. This may include firewalls, encryption, and other security measures necessary to safeguard data as it travels across the VA Wide Area Network. Data may be transmitted via a password protected spreadsheet and placed on the secured share point Web portal by the user that has been provided access to their secure file. Data can only be accessed by authorized personnel from each facility within the Polytrauma System of Care and the Physical Medicine and Rehabilitation Program Office.

5. In most cases, copies of back-up computer files are maintained at off-site locations.

RETENTION AND DISPOSAL:

The records are disposed of in accordance with General Records Schedule 20, item 4. Item 4 provides for deletion of data files when the agency determines that the files are no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEMS AND MANAGER(S) AND ADDRESS:

Officials responsible for policies and procedures; Assistant Deputy Under Secretary for Health for Informatics and Analytics (10P2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Officials maintaining this system of records; Director, National Data Systems (10P2C), Austin Information Technology Center, 1615 Woodward Street, Austin, Texas 78772.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the Director of National Data Systems (10P2C), Austin Information Technology Center, 1615 Woodward Street, Austin, Texas 78772. Inquiries should include the person's full name, Social Security number, location and dates of employment or location and dates of treatment, and their return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write or call the Director of National Data Systems (10P2C), Austin Information Technology Center, 1615 Woodward Street, Austin, Texas 78772, or call the VA National Service Desk and ask to speak with the VHA Director of National Data Systems at (512) 326–6780.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by Veterans, VA employees, VA computer systems, Veterans Health Information Systems and Technology Architecture, VA medical centers, VA Health Eligibility Center, VA program offices, VISNs, VA Austin Automation Center, the Food and Drug Administration, DoD, HUD, Survey of Healthcare Experiences of Patients, EPRP, and the following Systems Of Records: 'Patient Medical Records—VA' (24VA10P2), 'National Prosthetics Patient Database—VA' (33VA113), 'Healthcare Eligibility Records—VA' (89VA16), VA Veterans Benefits Administration automated record systems (including the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23), and subsequent iterations of those systems of records.

VA APPENDIX 4

Database name	Location
Addiction Severity Index (ASI)	Veteran Affairs Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206.
Bidirectional Health Information Exchange (BHIE)	SunGard, 1500 Spring Garden Street, Philadelphia, PA 19130.
VA Clinical Assessment Reporting and Tracking (CART) Program	Denver VA Medical Center, 1055 Clermont Street, Denver, CO 80220.
Care Management Information System	Veterans Affairs Medical Center, University and Woodland Aves., Philadelphia, PA 19104.
Consolidated Mail Outpatient Pharmacy (CMOP) Centralized Database System.	Southwest CMOP, 3675 East Britannia Drive, Tucson, AZ 85706.
Continuous Improvement in Cardiac Surgery (CICSP)	Veteran Affairs Medical Center, 820 Clermont Street, Denver, CO 80220.
Converged Registries (CR) Solution	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Cruetzfelet-Jakob Disease Lookback Dataset (CJDLD)	Cincinnati VA Medical Center, 3200 Vine Street, Cincinnati, OH 45220.
Decision Support System	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Dental Encounter System (DES)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Eastern Pacemaker Surveillance Center Database	Veteran Affairs Medical Center, 50 Irving Street, NW Washington, DC 20422.
Emerging Pathogens Initiative (EPI)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Federal Health Information Exchange (FHIE)	SunGard, 1500 Spring Garden Street, Philadelphia, PA 19130.
Financial Clinical Data Mart (FCDM)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Former Prisoner of War Statistical Tracking System	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Functional Status and Outcome Database (FSOC)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Healthcare Associated Infections &, Influenza Surveillance System (HAIISS) Data Warehouse.	Veteran Affairs Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304.
Home Based Primary Care (HBC)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Homeless Operational Management &, Evaluation System (HOMES)	Austin Information Technology Center, 1615 Woodward Street, Austin, Texas 78772.
Homeless Veterans Registry	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Interagency Care Coordination Committee's Community of Practice Co-Lab.	5450 Carlisle Pike, Mechanicsburg, PA 17050.
Injury Data Store	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Mammography Quality Standards (MQS) VA	Veteran Affairs Medical Center, 508 Fulton Street, Durham, NC 27705.
Master Veteran Index	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.

Database name	Location
Medical SAS File (MDP) (Medical District Planning (MEDIPRO))	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Missing Patient Register (MPR)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
National Mental Health Database System (NMHDS)	Veteran Affairs Medical Center, 7180 Highland Drive, Pittsburgh, PA 15206.
National Medical Information System (NMIS)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
National Survey of Veterans (NSV)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Office of Quality and Performance (OQP)	OQP Data Center, 601 Keystone Park Dr. Suite 800, Morrisville, NC 27560.
Parkinson's Disease Research, Education, and Clinical Centers Registry (PADRECC).	Veterans Affairs Medical Center, 4150 Clement St., San Francisco,, CA 94121.
Patient Assessment File (PAF)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Pharmacy Benefits Management (PBM)	Veterans Affairs Medical Center, 5th Avenue and Roosevelt Road, Hines, IL 60141.
Radiation Exposure Inquiries Database	Office of Information Field Office, 1335 East/West Hwy., Silver Spring, MD 20910.
Remote Order Entry System (ROES)	Denver Distribution Center, 155 Van Gordon Street, Lakewood, CO 80228–1709.
Resident Assessment Instrument/Minimum Data Set (RAI/MDS)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Short Form Health Survey for Veterans (SF–36V)	Veterans Affairs Medical Center, 200 Springs Rd., Bedford, MA 01730.
VA National Clozapine Registry (NCCC)	Veteran Affairs Medical Center, 4500 South Lancaster Road, Dallas, TX 75216.
VA Polytrauma Rehabilitation Center/Traumatic Brain Injury (TBI) Model System Database.	Craig Hospital, 3425 S. Clarkson St., Englewood, CO 80113.
VA Vital Status File (VSF)	Austin Information Technology Center, 1615 Woodward Street, Austin, TX 78772.
Veterans Administration Central Cancer Registry (VACCR)	Veteran Affairs Medical Center, 50 Irving Street, NW, Washington, DC 20422.

[FR Doc. 2014–02890 Filed 2–10–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 28 February 11, 2014

Part II

Federal Communications Commission

47 CFR Part 73

Television Broadcasting Services; Oklahoma City, Oklahoma; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–302; RM–11709; DA 14–130]

Television Broadcasting Services; Oklahoma City, Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a Notice of Proposed Rulemaking issued in response to a petition for rulemaking filed by Family Broadcasting Group, Inc. (''Family Broadcasting''), the licensee of KSBI(TV), channel 51, Oklahoma City, Oklahoma, requesting the substitution of channel 23 for channel 51 at Oklahoma City. Family Broadcasting has entered into a voluntary relocation agreement with U.S. Cellular Corporation and states that operation on channel 23 will eliminate potential interference to and from wireless operations in the adjacent Lower 700 MHZ A Block, thus serving the public interest.

DATES: This rule is effective February 11, 2014.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 13–302, adopted February 4, 2014, and released February 4, 2014. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com.* 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).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Oklahoma is amended by removing channel 51 and adding channel 23 at Oklahoma City.

[FR Doc. 2014–03105 Filed 2–10–14; 8:45 am]

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