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DEPARTMENT OF ENERGY

10 CFR Part 1004

RIN 1901–AA32

Revision of Department of Energy's Freedom of Information Act (FOIA) Regulations

AGENCY: FOIA Program, Office of Information Resources, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) publishes a final rule to amend the existing regulations that establish procedures by which records may be requested from all DOE offices pursuant to the Freedom of Information Act (FOIA). Today's final rule increases the per page rate for paper copy reproductions. This final rule also makes changes to bring the regulations into compliance with the 1996, 2007, and 2009 statutory amendments to the FOIA, and to reflect minor changes in the DOE's internal organizational structure.

DATES: This rule is effective May 27, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander Morris, FOIA Officer, Department of Energy, Office of Information Resources, Mail Stop MA–90, Room 1G–051, 1000 Independence Avenue SW., Washington, DC 20585; *Alexander.Morris@hq.doe.gov,* (202) 586–5955.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Public Comments and Final Rule
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I. Introduction

Part 1004 contains the regulations of the DOE that implement FOIA, 5 U.S.C. 552. This Part provides information concerning the procedures by which the public may request records from DOE offices, and the policies under which records shall be furnished to members of the public.

The DOE published a Notice of Proposed Rulemaking (NOPR) and Opportunity for Comment in the **Federal Register** on December 9, 2008, at 73 FR 74658. The NOPR proposed to streamline the DOE's procedures for determining the releasability of information and update the fee requirements for the reproduction of documents.

The NOPR proposed the removal of the ''extra balancing test'' requirement in section 1004.1 which requires the DOE to reconsider a determination to legally withhold information in accordance with 5 U.S.C. 552, and to release such information if disclosure would be in the public interest. The DOE stated that this requirement went beyond the requirements of the FOIA and imposed unnecessary administrative requirements on the DOE. This NOPR also proposed to amend section 1004.9(a)(4) to raise the per page rate for paper copy reproductions and microform to paper copies to the rate of 20 cents per page.

The DOE received 14 public comments on the two proposed amendments. A discussion of the comments is provided in this final rule.

The NOPR also stated that additional administrative changes that did not require notice and comment would be promulgated in the final rule to bring DOE's regulations into compliance with the 1996 amendments to FOIA and to reflect minor alterations in the DOE's internal organizational structure.

This final rule amends the regulations to add requirements from the 1996, 2007, and 2009 statutory amendments to the FOIA, and to reflect changes in the DOE's internal organizational structure. This final rule also amends the regulations to increase the per page rate for paper copy reproductions to the rate of ten cents per page.

II. Discussion of Public Comments and Final Rule

The DOE received 14 public comments. All commenters opposed the proposed removal of the ''extra balancing test'' requirement. After careful consideration of the public comments, the DOE has determined that keeping this requirement is more aligned with the spirit of openness and transparency and therefore, decided not to adopt this proposed change.

Five commenters opposed the proposed per page fee increase to 20 cents for document reproduction. Commenters stated that the proposed fee increase exceeded charges at commercial establishments, exceeded the actual cost of reproduction to the DOE, and was at the highest end of copying fees for comparable cabinet-level agencies. Several commenters stated that ten cents per page was a common fee among cabinet-level agencies and commercial photocopying services. One commenter suggested the rate should not be increased to more than ten cents per page.

After careful consideration of the public comments, the DOE has determined to increase the per page rate for paper copy reproductions to the rate of ten cents per page. In making this determination, the DOE balanced the interests of the public for a rate that is not prohibitive with the interests of the agency for a rate that is more reflective of its estimated reproduction costs. On this basis, rather than adopting the proposed rate of 20 cents per page, the DOE has determined to increase the rate to ten cents per page.

With respect to the final rule's ministerial changes, except for activities at the Office of Naval Reactors at Headquarters, the National Nuclear Security Administration has consolidated the management of its FOIA activities at the Albuquerque Complex in New Mexico. The Pittsburgh Naval Reactors Office and the Schenectady Naval Reactors Office have been merged to form the Naval Reactors Laboratory Field Office. The Oak Ridge Office processes requests for records under the jurisdiction of the Pacific Northwest Site Office. The DOE, therefore, is deleting the Nevada Site Office, the Pittsburgh Naval Reactors Office, the Schenectady Naval Reactors Office, and the Pacific Northwest Site Office, as offices where a Freedom of Information Act Officer is designated in section 1004.2(h). The Naval Reactors Laboratory Field Office and the Office of Naval Reactors at Headquarters are added as offices where a Freedom of Information Act Officer is designated in section 1004.2(h).

In section 1004.2(p), the DOE has added the Heads of current Secretarial Offices which were created since the

last publication of this rule and deleted positions that no longer exist.

Statutory changes regarding time limits, tolling, expedited processing, marking released records, restrictions on fees, and FOIA Exemption 3 (5 U.S.C. 552(b)(3)) have been added to sections 1004.4(a), 1004.5(d), 1004.7(b), 1004.9(a), and 1004.10(b). The 1996 amendments to the FOIA increase the general time for processing requests from 10 to 20 working days, and require agencies to expedite processing when requesters demonstrate a compelling need. The 2007 amendments to the FOIA: Clarify that the 20-day statutory time period for processing FOIA requests starts on the date the request is received by the appropriate component, and not later than 10 days after receipt by any component designated in an agency's regulations to receive requests; provide criteria for when the 20-day period may be suspended or tolled; require agencies to indicate the exemption for deletions made in released records; and preclude agencies from accessing search fees or duplication fees, except for commercial use requesters, when the FOIA time limits are not met and no unusual or exceptional circumstances apply. The 2009 amendment to the FOIA requires that statutes enacted after the enactment of the OPEN FOIA Act on October 28, 2009, must specifically cite Exemption 3 of the FOIA to qualify as an Exemption 3 withholding statute.

IV. Regulatory Review

A. Executive Order 12866

Today's rule has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B), the DOE finds that providing an opportunity for public comment on changes that incorporate the 1996, 2007, and 2009 statutory amendments to the FOIA prior to publication of this rule is not necessary and contrary to the public interest because the DOE is carrying out a ministerial, non-discretionary duty specified in an Act of Congress. Prior notice and opportunity to comment on these changes are therefore unnecessary because they are not subject to the exercise of discretion by the DOE. Today's rule also incorporates changes that reflect the DOE's current internal organizational structure. Prior notice and opportunity to comment on these changes are also unnecessary because they are minor technical changes.

C. National Environmental Policy Act

The DOE has reviewed this final rule under 10 CFR part 1021, DOE's National Environmental Policy Act Implementing Procedures. The DOE has determined that the final rule fits within categorical exclusion A.5 listed in Appendix A to 10 CFR part 1021, Subpart D: Rulemaking that interprets or amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the 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), the 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 rulemaking process (68 FR 7990). The DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.energy.gov/gc/office-general-counsel.*

In the NOPR, the DOE certified that this rule would not have a significant economic impact on a substantial number of small entities and did not prepare a regulatory flexibility analysis for this rulemaking. The DOE received no comments on the certification, and has responded to comments related to the economic impacts of the rule elsewhere in this preamble; no changes to the certification were made based on comments received. As a result, the DOE certifies that today's final rule will not have a significant impact on a substantial number of small entities. The DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

E. Paperwork Reduction Act

This rulemaking would impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by States, tribal, or local governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires Federal agencies to develop an effective process to permit timely input by elected officials of State, tribal, or local governments on a proposed significant intergovernmental mandate, and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The DOE has determined that the final rule published today does not contain any Federal mandates affecting States, tribal, or local governments, or the private sector, and, thus, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

G. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' 61 FR 4729 (February 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; (4) and promote simplification and burden reduction. With regard to the review required by section 3(a) and section 3(b), Executive Order 12988 specifically requires that Federal 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 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 section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. 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. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The DOE has examined this final rule and has determined that it would not preempt State law and would not have 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. No further action is required by Executive Order 13132.

I. 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 proposed rule that may affect family well-being. This final rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, the DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. 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 would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, the DOE has not prepared a Statement of Energy Effects.

K. Treasury and General Government Appropriations Act, 2001

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 the OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and the DOE's guidelines were published at 67 FR 62446 (October 7, 2002). The DOE has reviewed today's final rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, the DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 1004

Freedom of Information Act.

Issued in Washington, DC, on March 27, 2014.

Ingrid Kolb,

Director, Office of Management.

For the reasons set forth in the preamble, the Department of Energy amends Part 1004 of Title 10 of the Code of Federal Regulations as set forth below.

PART 1004—FREEDOM OF INFORMATION ACT (FOIA)

■ 1. The authority citation for part 1004 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 2. The heading for part 1004 is revised to read as set forth above.

§ 1004.1 [Amended]

■ 3. Section 1004.1 is amended by:

■ a. Adding ''Freedom of Information (FOIA)'' before ''5 U.S.C. 552'' in the first sentence.

■ b. Removing, in the first sentence, the period after ''3207–49'' and adding in its place, '', by Pub. L. 104–231, 110 Stat. 3048, by Pub. L. 110–175, 121 Stat. 2524, and by Pub. L. 111–83 564, 123 Stat. 2142, 2184.''

§ 1004.2 [Amended]

■ 4. Section 1004.2 is amended:

■ a. In paragraph (h) by adding ''Act (FOIA)'' after ''Information'' and before ''Officer

■ b. In § 1004.2(h)(1) by removing ''–KDP–7''.

■ c. In § 1004.2(h)(8) by removing ''Service Center'' and adding, in its place, ''Albuquerque Complex''.

■ d. By removing paragraph (h)(9) and redesignating (h)(10) as (h)(9).

■ e. By adding paragraph (h)(10).

■ f. By removing paragraphs (h)(13), (h)(14), and (h)(17).

■ g. By redesignating (h)(12) as (h)(13).

■ h. By adding a new paragraph (h)(12).

■ i. By redesignating (h)(15) as (h)(14), (h)(16) as (h)(15), (h)(18) as (h)(16), (h)(19) as (h)(17), (h)(20) as (h)(18), and (h)(21) as (h)(19).

■ j. By adding at the end of the sentence in paragraph (j), ''except the Office of Naval Reactors.''

■ k. In paragraph (p), by removing ''Director, Office of Civilian Radioactive Waste Management'' and, adding in its place, ''Director, Advanced Research Projects Agency—Energy'', ''Director, Office of Indian Energy Policy and Programs'', and ''Director, Loan Programs Office''.

The additions read as follows:

§ 1004.2 Definitions.

* * * * *

(h) * * *

(10) Naval Reactors Laboratory Field Office, P.O. Box 109, West Mifflin, PA 15122–0109.

* * * * *

(12) Office of Naval Reactors, Headquarters, 1240 Isaac Hull Avenue SE., Washington Navy Yard, DC 20376–0822.

* * * * *

§ 1004.3 [Amended]

■ 5. Section 1004.3 is amended:

■ a. In paragraph (a) by removing ''Freedom of Information'' and adding, in its place, ''Office of Information Resources''.

■ b. By adding a new sentence before the last sentence to read as set forth below.

■ c. By removing, in the last sentence, ''the'' before ''DOE Headquarters.''

The addition reads as follows:

§ 1004.3 Public reading facilities and policy on contractor records.

(a) * * * The DOE Headquarters will maintain an electronic public reading room that can be accessed at *http://energy.gov/management/office-management/operational-management/freedom-information-act/reading-room* * * *

* * * * *

§§ 1004.1, 1004.3, 1004.4, 1004.5, 1004.6, 1004.9, and 1004.11 [Amended]

■ 6. Sections 1004.1, 1004.3(a), 1004.4(a), 1004.4(c), 1004.5(a), 1004.5(c), 1004.6(b), 1004.6(c), 1004.9(a), 1004.9(b), 1004.11(b), 1004.11(c), and 1004.11(d) are amended by removing ''Freedom of Information'' wherever it occurs and, adding in its place, ''FOIA''.

■ 7. Section 1004.4(a) is revised to read as follows:

§ 1004.4 Elements of a request.

(a) *Addressed to the FOIA Officer.* A request for a record of the DOE which is not available in a public reading facility, as described in § 1004.3, shall be: Addressed to the Headquarters or appropriate field FOIA Officer at the DOE at a location listed in § 1004.2(h) of this part, and both the envelope and the letter shall be clearly marked ''Freedom of Information Act Request;'' or submitted electronically on the Headquarters or appropriate field FOIA Web sites. Except as provided in § 1004.4(e), a request will be considered to be received by the DOE for purposes of 5 U.S.C. 552(a)(6) and the 20-day response period will start upon actual receipt by the appropriate FOIA Officer, or not later than 10 days after receipt by a designated FOIA Officer at any location in § 1004.2(h). Requests delivered after regular business hours of the FOIA Officer are considered received on the next regular business day.

* * * * *

§ 1004.5 [Amended]

■ 8. Section 1004.5 is amended:

■ a. In paragraph (b) by adding ''or FOIA Officer'' after ''Authorizing Official'' in the second sentence.

■ b. In paragraph (c) by adding ''or FOIA Officer'' after ''Authorizing Official, and by removing ''any other'' and adding ''all'' before ''Authorizing Officials''.

■ c. In paragraphs (d)(1) and (d)(4) by removing ''10'' and adding ''20'' in its place.

■ d. In paragraphs (d)(4) and (d)(5), by adding ''or FOIA Officer'' after ''Authorizing Official'' wherever it appears.

■ e. In paragraph (d)(1) by adding paragraph designation ''(iii)'' after ''except that,''; the redesignated (d)(1)(iii) is further amended by removing ''if'' and adding in its place ''If'' and by adding ''or FOIA Officer'' after ''Authorizing Official''.

■ f. Adding paragraphs (d)(1)(i) and (ii), (d)(6) and (d)(7).

The additions read as follows:

§ 1004.5 Processing requests for records.

* * * * *

(d) * * *

(1) * * *

(i) One request can be made to the requester for information and the DOE can toll the 20-day response period while it waits for the requester's response;

(ii) If necessary to clarify with the requester issues regarding fee assessment and the DOE can toll the 20-day response period; or

* * * * *

(6) Expedited processing. Generally, the DOE will respond to requests in the order of receipt. Requests will be processed out of order and processed as soon as practicable when it is determined, based upon information supplied by the requester or otherwise known to the DOE, that a compelling need exists to provide the records in an expeditious manner. The FOIA states that a compelling need exists when failure to obtain records expeditiously could reasonably be expected to pose a threat to the life or physical safety of an individual or, when a request is submitted by a person primarily engaged in disseminating information and there is an urgency to inform the public about actual or alleged Federal Government activity.

(7) A determination to grant or deny a request for expedited processing will be made by the appropriate FOIA Officer within 10 days after receipt of the request. The requester will be notified of the determination and informed that any denial may be appealed within 30 calendar days to the Office of Hearings and Appeals.''

§ 1004.6 [Amended]

■ 9. Section 1004.6 is amended:

■ a. In paragraph (a) by removing ''and Unclassified Controlled Nuclear Information''.

■ b. In paragraph (b) by removing ''12356'' and adding ''13526 and § 1045'' after ''Executive Order''.

■ c. In paragraph (c) by removing ''requests for classified records'' and adding in its place, ''the denial of classified information''.

§ 1004.7 [Amended]

■ 10. Section 1004.7 is amended:

■ a. In paragraph (a) by removing ''Freedom of Information Act'' and adding in its place, ''FOIA''.

■ b. In paragraph (b) by adding ''a FOIA Officer'' after ''signed by''.

■ c. In paragraph (b)(1) by removing ''Freedom of Information Act'' and adding in its place, ''FOIA'', and by adding a new sentence at the end of the last sentence to read as follows.

§ 1004.7 Responses by authorizing officials: Form and content.

* * * * *

(b) * * *

(1) * * * The amount of information deleted and the applicable exemption will be indicated on the released portion of the record, unless the indication would harm an interest protected by the exemption.

* * * * *

§ 1004.8 [Amended]

■ 11. Section 1004.8 is amended:

■ a. In paragraph (a) by adding ''or Denying Official or FOIA Officer'' after Authorizing'', and by adding ''for expedited processing consistent with § 1004.5(d)'' after ''denied a request''.

■ b. In paragraph (b) by:

■ 1. Adding ''–1615'' after ''DC 20585'';

■ 2. Adding ''Act'' after ''Freedom of Information''; and

■ 3. Adding a new sentence after ''Freedom of Information Act Appeal.''

■ 4. Adding a new sentence at the end of the paragraph.

■ c. In paragraphs (c), (d)(1), (d)(4), and (e) by removing ''appeal authority'' and adding ''Appeal Authority''.

■ d. In paragraph (f) by adding ''or her'' after 'his''.

■ e. By adding a new paragraph (g).

The additions read as follows:

§ 1004.8 Appeal of initial denials.

* * * * *

(b) * * * The appeal may be delivered by U.S Mail or commercial delivery service, by electronic mail to *OHA.Filings@hq.doe.gov,* or by facsimile to (202) 287–1415. * * * The appeal also should provide a telephone

number, electronic mail address, or other means for communicating with the requester during business hours.

* * * * *

(g) *Appeal of the denial of expedited processing.* Any appeal of the determination to deny a request for expedited processing will be acted on expeditiously.''

§ 1004.9 [Amended]

■ 12. Section 1004.9 is amended:
■ a. In paragraph (a) introductory text, by adding at the end of the fifth sentence: '', which are determinations by Authorizing Officials or FOIA Officers.''
■ b. In paragraph (a)(4) by removing ''five'' and adding ''ten'' before ''cents per page''.
■ c. In paragraph (a)(6) by:
■ 1. Adding paragraph designation ''(i)'' before ''With the exception of'';
■ 2. Removing ''81/2x11'' and adding, in its place, ''8-1/2x11''; and
■ 3. Adding a paragraph (a)(6)(ii).
■ d. In paragraph (a)(7), amend the last sentence by:
■ 1. Removing ''him'';
■ 2. Removing ''his'' before ''request'' and adding, in its place, ''the''; and
■ 3. Adding ''or her'' before ''needs at a lower cost.''
■ e. In paragraph (a)(8) by adding ''appropriate'' before ''FOIA Officer''.
■ f. In paragraph (b) by removing ''Freedom of Information Officer'' and adding, in its place, ''FOIA Officers''.
■ g. In paragraph (b)(8)(ii) by adding ''or she'' after ''he'' and, by removing ''10'' and adding, in its place, ''20'' before ''working days from receipt of initial requests''.

The addition read as follows:

§ 1004.9 Fees for providing records.

(a) * * *

(6) * * *

(ii) When unusual or exceptional circumstances do not apply and time limits specified in the FOIA are not met, the DOE will not charge any search fees, or duplication fees for educational and non-commercial scientific institution requesters and requesters who are representatives of the news media.

* * * * *

§ 1004.10 [Amended]

■ 13. Section 1004.10 is amended:
■ a. In paragraph (b)(3)(i) by removing '', or'' after ''issue'' and adding, in its place, ''; '',
■ b. In paragraph (b)(3)(ii) by adding ''or'' after ''exemption'', and
■ c. By adding (b)(3)(iii) to read as follows:

§ 1004.10 Exemptions.

* * * * *

(b) * * *

(3) * * *

(iii) If enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3).

* * * * *

§ 1004.11 [Amended]

■ 14. Section 1004.11(h) is amended by adding in the third sentence, ''excluding paragraph (f)(5)'' after ''paragraph (f) of this section.''

[FR Doc. 2014–07449 Filed 4–24–14; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AG61

Disaster Assistance Loan Program; Disaster Loan Credit and Collateral Requirements.

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Interim Final Rule with request for comments.

SUMMARY: SBA is amending its disaster loan program regulations in response to Hurricane Sandy Rebuilding Task Force recommendations. One change allows SBA to rely on the disaster loan applicant's credit, including credit score, rather than personal or business cash flow in order to assess repayment ability for those applicants with strong credit.

Another change will increase the amount of disaster assistance funds that can be immediately disbursed to borrowers by raising the unsecured threshold for economic injury loans for all disasters and for physical damage loans for major disasters. Both of these changes will enable SBA to provide disaster assistance more quickly and efficiently.

DATES: *Effective date:* April 25, 2014.

Applicability date: This rule is applicable for disasters declared on or after April 25, 2014.

Comment date: Comments must be received on or before June 23, 2014.

ADDRESSES: You may submit comments, identified by RIN 3245–AG61, by any of the following methods: (1) Federal Rulemaking Portal: *http://www.regulations.gov,* following the specific instructions for submitting comments; (2) Fax: (202) 481–2336; or Email: *James.Rivera@sba.gov;* or (3) Mail/Hand Delivery/Courier: James E. Rivera, Associate Administrator for Disaster Assistance, 409 3rd Street SW., Washington, DC 20416.

SBA will post all comments to this interim final rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Bartie J. Larsen, Office of Disaster Assistance, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *bartie.larsen@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Bartie J. Larsen, Office of Disaster Assistance, 202–205–6734 or *Bartie.Larsen@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Hurricane Sandy Rebuilding Task Force was established pursuant to an Executive Order issued on December 7, 2012, E.O. 13632, Establishing the Hurricane Sandy Task Force (December 7, 2012). This Task Force was established to ensure the recovery effort benefitted from cabinet-level focus and coordination, and was charged with establishing guidelines for the investment of Federal funds made available for the recovery.

With the Secretary of Housing and Urban Development as its Chair, the Task Force consisted of the heads of twenty-three executive department agencies and offices. As a member of this task force, SBA collaborated with these executive agencies and offices to identify and work to remove obstacles to resilient rebuilding while taking into account existing and future risks and promoting the long-term sustainability of communities and ecosystems in the Sandy-affected region. The resultant Rebuilding Strategy developed by the Task Force included recommendations across several policy areas. See *http://portal.hud.gov/hud portal/documents/huddoc?id=HSRebuildingStrategy.pdf.* The Task Force recommended that SBA, among other recommendations, (a) institute new and innovated process improvements to SBA's Disaster Loan program, and (b) increase SBA's unsecured disaster loan limits in order to expedite the disbursement of small dollar loans.

II. Explanation of Changes

SBA is incorporating the Task Force's recommendation to institute new and

innovated process improvements to SBA's Disaster Loan Program by amending 13 CFR 123.6 of SBA regulations to allow SBA to rely on a disaster applicant's credit, including score, as evidence of repayment ability. The current language of § 123.6 requires SBA to analyze every applicant's personal or business cash flow, which is a time consuming process. The interim final rule revises § 123.6 to allow SBA to base its repayment ability determination on either the applicant's cash flow or credit, including credit score. The repayment analysis will still include the verification of income/employment through Federal income tax returns. SBA also still plans to analyze personal or business cash flow to determine repayment ability for those applicants that do not have strong credit, as determined by SBA. However, removing the requirement to analyze cash flow for all loans allows SBA to expedite processing of applications from disaster victims with strong credit. Expediting the approval of disaster loan applications with strong credit will make processing more efficient because SBA can then dedicate additional staff to applications that do not have strong credit, thereby reducing overall processing time for all loans. This change is also a result of SBA's Retrospective Regulatory Review efforts, specifically the ''Accelerated Approval Disaster Loans Based on Credit Scores'' project in SBA's Final Plan for Retrospective Analysis of Existing Rules (available at *http://www.sba.gov/about-Sba/sba_performance/strategic planning/sba_final _plan_for_ retrospective_analysis_of_existing_ rules*).

SBA is also revising 13 CFR 123.11 to incorporate the Task Force's recommendation to increase SBA's unsecured disaster loan limits. SBA's current limits on unsecured disaster loans, which do not require collateral, are $14,000 for physical damage and $5,000 for economic injury. The revised regulations will raise the unsecured limit to $25,000 for economic injury loans for all disasters and for physical damage loans for major disasters. The unsecured limit for physical damage loans for non-major disasters will continue to be $14,000, in accordance with the Small Business Act. With these increased limits, more businesses, homeowners, and other potential victims that may be impacted by future disasters will receive much-needed small dollar loans more quickly following a disaster.

The above changes apply to all eligible recipients of SBA disaster loans for disasters declared on or after April 25, 2014.

III. Justification for Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

Disasters are unpredictable and can happen with very little notice. Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change the rules governing SBA disaster assistance loans without advance notice, by publishing interim regulations in the **Federal Register**. 13 CFR 123.1. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest as it would prevent expedited processing and disbursement of disaster loans. Any such delay may cause undue hardship to homeowners, businesses and their communities as they struggle to recover from future disasters.

SBA invites comments from all interested members of the public. These comments must be received on or before the close of the comment period noted in the **DATES** section of this interim final rule. SBA will then consider these comments in making any necessary revisions to these regulations.

IV. Justification for Immediate Effective Date

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as—otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect.

SBA's disaster loan program offers low interest, fixed rate loans to disaster victims, enabling them to replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses and non-profits to help them recover from economic injury caused by such disasters. The changes in this interim final rule will not require members of the public to adjust their behavior. Rather, the changes will benefit the public by expediting the processing and disbursement of SBA disaster loans.

In light of the urgent need to assist disaster victims, SBA finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date. While this interim final rule is effective immediately upon publication, SBA is inviting public comment on the rule during a 60-day period and will consider the comments in developing a final rule. SBA has included an applicability date to make clear that the rule is applicable for disasters declared on or after the date of publication in the **Federal Register** in order to make these changes available to future disaster victims as soon as possible.

Compliance With Executive Orders 12866, 12988, 13132, and 13563 and the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this interim final rule is a significant regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

A. Regulatory Objective of the Proposal

SBA is amending its disaster loan program regulations in response to Hurricane Sandy Rebuilding Task Force recommendations to (a) institute new and innovative process improvements to SBA's Disaster Loan program; and (b) increase SBA's unsecured disaster loan limits in order to expedite the disbursement of small dollar loans. Amending § 123.6 of SBA regulations will allow SBA to rely on a disaster loan applicant's credit, including credit score, in order to assess repayment ability. Amending § 123.11 will raise SBA's limits on unsecured disaster loans (currently $14,000 for physical damage and $5,000 for economic injury) to $25,000 for economic injury loans for all disasters and for physical damage loans for major disasters.

B. Benefits of the Rule

This interim final rule will directly benefit disaster victims by decreasing the amount of time required by SBA to process disaster loan applications and increasing the amount of loan proceeds available for disbursement without collateral. Credit scoring will allow for

a more expeditious approval process because SBA will not be constrained by the requirement to conduct a complete cash flow analysis for every loan (which includes debt reconciliation and a repayment analysis to determine if there are funds available for both loan payments and day-to-day living expenses). Removing the requirement to analyze cash flow for all loans allows SBA to expedite processing of applications from disaster victims with strong credit, which will allow SBA to dedicate more staff to more time-consuming applications, thereby reducing overall processing time for all loans. This change is also a result of SBA's Retrospective Regulatory Review efforts, specifically the ''Accelerated Approval Disaster Loans Based on Credit Scores'' project in SBA's Final Plan for Retrospective Analysis of Existing Rules (available at *http://www.sba.gov/about-Sba/sba_performance/strategic_planning/sba_final_plan_for_retrospective_analysis_of existing rules*).

Increasing the unsecured loan threshold for economic injury loans for all disasters and for physical damage loans for major disasters to $25,000 will also benefit disaster victims. Currently, SBA can only disburse up to $5,000 for economic injury loans and up to $14,000 for physical damage loans prior to obtaining the appropriate security instruments. This increase will allow SBA to quickly disburse more funds to disaster victims. For example, under certain circumstances SBA may require additional documentation to disburse funds above the unsecured limit (e.g., a building permit is required prior to any disbursement for repairs above $14,000 to property that secures the Joan). Unsecured loans, however, require only limited documentation: An executed note, loan authorization and agreement, and proof of flood insurance if the property is located in a Special Flood Hazard Zone. Because there is less documentation to collect and review, SBA can disburse funds below the unsecured loan threshold much more quickly.

C. Costs of the Rule

The calculated subsidy from the proposed changes has no significant impact on the overall subsidy rate. In addition, the rule will not result in any additional costs to disaster victims. Although SBA will use expedited processing to approve loan applications from disaster victims with strong credit, loan applications will not be declined based solely on credit scores. SBA still plans to analyze personal or business cash flow to determine repayment ability for those applicants who do not have strong credit.

D. Alternatives

Working with the other members of the Hurricane Sandy Rebuilding Task Force, SBA determined that these regulatory changes are the best available means of achieving the Task Force's goals of instituting new and innovated process improvements to SBA's Disaster Loan program and increasing SBA's unsecured disaster loan limits.

SBA has already made several non-regulatory changes to implement the Sandy Task Force's recommendation to institute new and innovated process improvements to the disaster loan program. For example, SBA has implemented a process of separate application tracks for business and home disaster loans, which allows SBA to process business disaster loans more quickly. In addition, SBA has established a new training module for reserve disaster loan officers based on efficiencies and improvements identified in an analysis of the Hurricane Sandy response to ensure that a trained reserve staff is in place for future disasters. However, in order to fully implement the recommendations of the Task Force, SBA must revise its regulations to allow SBA to base its repayment ability determination on either the applicant's cash flow or credit, including credit score, and to increase the unsecured disaster loan limits.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect. The final rule will not have retroactive effect and will not apply to disasters declared before April 25, 2014.

Executive Order 13132

SBA has determined that this interim final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this interim final rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 12866 and 13563

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 also requires that regulations be based on the open exchange of information and perspectives among state and local officials, affected stakeholders in the private sector, and the public as a whole.

In developing this rule, SBA collaborated with multiple agencies through its participation on Hurricane Sandy Rebuilding Task Force. The Task Force was led by the Secretary of Housing and Urban Development, and included twenty-three executive department agencies and offices. The Task Force worked with these Federal agency members as well as state and local officials to identify areas where immediate steps could be taken to help communities recovering from Hurricane Sandy. SBA continues to communicate with the other members of the Task Force via monthly progress reports.

Executive Order 13563 also recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. SBA had identified revisions to § 123.6 to expedite approval of disaster loans based on credit score as a part of its retrospective review. As stated in that report, an analysis of the performance of disaster loans to borrowers with strong credit indicated limited risk.

Changing the current process of requiring a cash flow analysis for all loan applications would allow SBA more flexibility to design a loan approval that is in line with current private sector practices and reduce the processing cost for disaster loans.

Paperwork Reduction Act (44 U.S.C. Ch. 35)

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this interim final rule would not impose any new reporting or recordkeeping requirements.

Regulatory Flexibility Act (5 U.S.C. 601–612)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 requires administrative agencies to consider the effect of their actions on small entities, including small businesses.

According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. Rules are exempt from the APA notice and comment requirements when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. SBA has determined that there is good cause to adopt this interim final rule without prior public participation; therefore, the rule is also exempt from the RFA requirements. SBA invites comments on this determination.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs-business, Reporting and recordkeeping requirements, Small businesses, Terrorism.

For reasons set forth in the preamble, SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b) (6), 636(b), 636(d), 657n; Pub. L. 102–395, 106 Stat. 1828, 1864; Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245.

■ 2. Amend § 123.6 by revising the first sentence to read as follows:

§ 123.6 What does SBA look for when considering a disaster loan applicant?

There must be reasonable assurance that you can repay your loan based on SBA's analysis of your credit or your personal or business cash flow, and you must also have satisfactory character.* * *

■ 3. Amend § 123.11 as follows:

■ a. Remove the introductory text and paragraph (c);

■ b. Redesignate paragraphs (a) and (b) as (c) and (d)

■ c. Add new paragraphs (a) and (b); and

■ d. Revise the second sentence of newly redesignated paragraph (c) to read as follows.

§ 123.11 Does SBA require collateral for any of its disaster loans?

(a) When collateral is not required:

(1) *Economic injury disaster loans.* Generally, SBA will not require that you pledge collateral to secure an economic injury disaster loan of $25,000 or less.

(2) *Physical disaster home and physical disaster business loans.* SBA will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of $14,000 or less. In addition, under a Major Disaster, SBA generally will not require that you pledge collateral to secure a physical disaster home or physical disaster business loan of $25,000 or less.

(3) *IDAP loans.* Collateral requirements for IDAP loans are set forth in Subpart H of this part.

(4) *Military Reservist EIDL.* For the purposes of the Military Reservist EIDL only, as described in section 123.513, SBA will not generally require that you pledge collateral to secure a loan of $50,000 or less.

(b) For loans larger than the amounts outlined in paragraph (a) of this section, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal/business property, or both.

(c) * * * In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed the applicable unsecured threshold outlined in paragraph (a)(2) of this section and all economic injury disaster loans to see if they exceed $25,000.

* * * * *

Dated: April 16, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–09183 Filed 4–24–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2014–0225; Amdt. No. 91–331]

RIN 2120–AK50

Prohibition Against Certain Flights in the Simferopol (UKFV) Flight Information Region (FIR)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Immediately adopted final rule.

SUMMARY: This action prohibits certain flight operations in a portion of the Simferopol (UKFV) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action to be necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

DATES: This final rule is effective on April 25, 2014, and remains in effect through April 27, 2015.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Will Gonzalez, Air Transportation Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8166; email *will.gonzalez@faa.gov.*

For legal questions concerning this action, contact Robert Frenzel, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7638; email *robert.frenzel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

Title 5, United States Code (U.S.C.) § 553(b)(3)(B) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' In this instance, the FAA finds that notice and public comment to this immediately adopted final rule, as well as any delay in the effective date of this rule, are contrary to the public interest due to the immediate need to address the potential hazard to civil aviation that now exists in a portion of the Simferopol (UKFV) FIR, as described in the Background section of this notice.

Authority for This Rulemaking

The FAA is responsible for the safety of flight in the United States (U.S.) and for the safety of U.S. civil operators, U.S.-registered aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in 49 U.S.C. Subtitle I, section 106(f), describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section

40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority because it prohibits the persons subject to paragraph (a) of this Special Federal Aviation Regulation (SFAR) from conducting flight operations in a portion of the Simferopol (UKFV) FIR due to the potential hazard to the safety of such persons' flight operations described in the Background section of this document.

I. Overview of Immediately Adopted Final Rule

This action prohibits flight operations in a portion of the Simferopol (UKFV) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

II. Background

The FAA has safety and national security concerns regarding flight operations in a portion of the Simferopol (UKFV) FIR. On March 28, 2014, the Russian Federation issued a Notice-to-Airmen (NOTAM) purporting to establish unilaterally a new FIR, effective April 3, 2014, in a significant portion of the Simferopol (UKFV) FIR. The affected airspace includes sovereign Ukrainian airspace over the Crimean Peninsula and the associated Ukrainian territorial sea, as well as international airspace managed by Ukraine over the Black Sea and the Sea of Azov under a regional air navigation agreement approved by the Council of the International Civil Aviation Organization (ICAO). This action by the Russian Federation contradicts international law, including provisions of the Convention on International Civil Aviation, done at Chicago, December 7, 1944 (also known as the ''Chicago Convention'') and the standards established in Annex 11 to the Chicago Convention. Ukraine has rejected the Russian Federation's purported establishment of a new FIR within the existing Simferopol (UKFV) FIR and continues to provide air traffic control services in both Ukrainian territorial airspace and international airspace assigned to Ukraine.

In response to the Russian Federation's actions, Ukraine established a prohibited area over the Crimean Peninsula for flight operations below flight level 290 by means of a NOTAM and closed various air traffic services (ATS) route segments. The Russian Federation further responded by the issuance of a NOTAM that rejected and directly conflicts with Ukrainian NOTAMs concerning the establishment of the prohibited area and the route segment closures. On April 2, 2014, ICAO's Regional Director for Europe and the North Atlantic Regions issued a state letter to countries and their civil aviation authorities highlighting the possible existence of serious risks to the safety of international civil flights. ICAO stated that, due to the unsafe situation where more than one ATS provider may be controlling flights within the same airspace from April 3, 2014, 0600 Universal Time Coordinated (UTC) onwards, consideration should be given to implementing measures to avoid the airspace and to circumnavigate the Simferopol (UKFV) FIR with alternative routings.

In the FAA's view, the potential for civil aircraft to receive confusing and conflicting air traffic control instructions from both Ukrainian and Russian ATS providers while operating in the portion of the Simferopol (UKFV) FIR covered by this SFAR is unsafe and presents a potential hazard to civil flight operations in the disputed airspace. In addition, political and military tension between Ukraine and the Russian Federation remains high, and compliance with air traffic control instructions issued by the authorities of one country could result in a civil aircraft being misidentified as a threat and intercepted or otherwise engaged by air defense forces of the other country.

This SFAR will remain in effect for one year. During this period, the FAA will continue to actively evaluate the area and the airports in the region to determine to what extent U.S. civil operators may be able to safely operate in the region. Adjustments to the SFAR may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind the SFAR as necessary prior to the expiration date.

Because the circumstances described herein warrant immediate action by the FAA, I find that notice and public comment under 5 U.S.C. 553(b)(3)(B) are impracticable and contrary to the public interest. However, we will accept any comments regarding the impact of this action for consideration in future rulemaking action to amend or rescind this SFAR. Further, I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance. I also find that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Approval Based on Authorization Request of an Agency of the United States Government

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 113, § 91.1607, including a U.S. air carrier or a U.S. commercial operator, to conduct a charter to transport civilian or military passengers or cargo through the portion of the Simferopol (UKFV) FIR covered by this SFAR, that department, agency, or instrumentality may request the FAA to approve persons covered under SFAR No.113, § 91.1607, to conduct such operations. An approval request must be made in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality of the U.S. Government; the letter must be sent to the Associate Administrator for Aviation Safety (AVS–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request an electronic copy of the FAA's response. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service at (202) 267–8166 for the appropriate email address, as the division anticipates an email system change in the near future that would likely make any email address published here outdated. A single letter may request approval from the FAA for

multiple persons covered under SFAR No. 113, § 91.1607, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) expected to be covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations within the portion of the Simferopol (UKFV) FIR covered by this SFAR where the proposed operation(s) will be conducted; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (e.g., pre-mission planning and briefing, in-flight, and post-flight).

The request for approval must also include a list of operators, including subcontractors, with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) for specific flight operations in the Simferopol (UKFV) FIR. Additional such operators may be identified to the FAA at any time after the FAA approval is issued. Updated lists should be sent to the email address specified by the Air Transportation Division, (202) 267–8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Will Gonzalez for instructions on submitting it to the FAA. His contact information is listed in the For Further Information Contact section of this final rule.

FAA approval of the operation under SFAR No. 113, § 91.1607, does not relieve persons subject to this SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft will have to comply with the conditions of their certificate and Operations Specifications (OpSpecs). In addition, operators will have to comply with all rules and regulations of other U.S. Government departments or agencies that may apply to the proposed operation, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Approval Conditions

When the FAA approves the request, the FAA's Aviation Safety Organization (AVS) will send a letter to the requesting department, agency, or instrumentality confirming that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Any approval will specify that the operation is not eligible for coverage under a premium war risk insurance policy issued by the FAA under chapter 443 of title 49, U.S. Code.[1]

(3) If the proposed operation would have been covered by a premium war risk insurance policy issued by the FAA, but for SFAR No. 113, § 91.1607, the FAA will issue an endorsement to that premium policy that specifically excludes coverage for any operations into, out of, within, or through the portion of the Simferopol (UKFV) FIR covered by this SFAR, including operations under a flight plan that contemplates landing in or taking off from Crimea. The endorsement to the premium policy will take effect before the approval's effective date. The operator must further establish that it has obtained substitute commercial war risk coverage for operations in the portion of the Simferopol (UKFV) FIR covered by this SFAR or that the operation would be covered by an effective non-premium war risk insurance policy issued by the FAA under chapter 443 of title 49, U.S. Code. The exclusion specified in the endorsement remains in effect notwithstanding the issuance of any approval under, or exemption from, this SFAR (the chapter 443 premium policy refers to such approval as a ''waiver'' and such exemption as an ''exclusion''). Additionally, before any approval takes effect, the operator must submit to the FAA a written release of the U.S. Government (including but not limited to the United States of America, as Insurer) from all damages, claims and liabilities, including without limitation legal fees and expenses, and the operator's agreement to indemnify the U.S. Government (including but not limited to the United States of America, as Insurer) with respect to any and all third-party damages, claims and liabilities, including without limitation legal fees and expenses, relating to any event arising from or related to the approved operations in the portion of the Simferopol (UKFV) FIR covered by this SFAR. This waiver of claims does not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA.

(4) Other conditions determined by the FAA, including those that may be imposed in OpSpecs.

If the proposed operation or operations are approved, the FAA will issue OpSpecs to the certificate holder authorizing these operations. The FAA will notify the departments, agencies, or instrumentalities that request FAA approval of civil flight operations to be conducted by one or more persons described in paragraph (a) of this SFAR of any additional conditions beyond those contained in the approval letter, if the operations are approved. The requesting department, agency, or instrumentality must have a contract (includes subcontracts), grant, or cooperative agreement with the person(s) described in paragraph (a) of this SFAR on whose behalf the department, agency, or instrumentality requests FAA approval.

Request for Exemptions

Any operations not conducted under the approval process discussed above must be conducted under an exemption from this SFAR. A request by any person covered under SFAR No. 113, § 91.1607, for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process set forth in this SFAR. In addition to the information required by 14 CFR § 11.81, as a minimum, the petitioner must describe in its submission to the FAA—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- The specific locations within the portion of the Simferopol (UKFV) FIR covered by this SFAR where the proposed operation(s) will be conducted, and;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (e.g., pre-mission planning and briefing, in-flight, and post-flight).

Additionally, the endorsement of any premium war risk insurance policy

[1] If and when, in connection with an operator's contract with a department, agency, or instrumentality of the U.S. Government, an operation is covered by a non-premium war risk insurance policy issued by FAA under 49 U.S.C. 44305, coverage under that operator's FAA premium war risk insurance policy is suspended as a condition of that premium policy.

issued under chapter 443 of title 49, U.S. Code, and a waiver and indemnification agreement, all as referred to above, will also be required as a condition of any exemption issued under SFAR No. 113, § 91.1607. The FAA recognizes that there may be operations conducted for the governments of other countries with the support of the U.S. Government that may be affected by this SFAR. While these operations will not be permitted through the approval process, the FAA will process exemption requests for such operations on an expedited basis and prior to any private exemption requests.

IV. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. 2532, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. 1532, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order (DOT) 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This rule prohibits flights in an area of airspace over the Crimean Peninsula, the associated Ukrainian territorial sea, and adjacent international airspace assigned to Ukraine where both the Ukrainian and Russian air traffic services claim jurisdiction. This situation could result in confusing or conflicting instructions to operators of civil aircraft, creating a potentially unsafe operating environment. The alternative flight routes result in some additional fuel and operations costs to the operators, as well as some costs attributed to passenger time. By prohibiting unsafe flights, the benefits of this rule will exceed the minimal flight deviation costs.

In conducting these analyses, FAA has determined this final rule is a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, because it raises novel policy issues contemplated under that executive order. The rule is also ''significant'' as defined in DOT's Regulatory Policies and Procedures. The final rule, if adopted, will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade and will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

U.S. certificate holders affected by this final rule are predominately large passenger and all-cargo carriers. There are some small entity operators flying under U.S. government contract and some operators providing flights that support oil operations that the FAA anticipates will also be affected. Many of these operations are conducted by small entities, but due to the immediacy of the potential harm to U.S. certificate holders, their passengers, crew, and cargo, there is not a sufficient amount of time to ascertain exact numbers. There are likely to be enough such operators to be considered a substantial number of small entities. While we have not performed a full cost benefit analysis of this rule, we estimate that approximately 10 to 12 U.S. carrier operations per day will be impacted by this rule, and that the average cost of avoiding the disputed air space is approximately $2,000 per flight, equating to a cost estimate to U.S. carriers of $8.8–11 million, annually. This estimate does not include additional operations costs and time costs. However, the $2,000 per flight estimate includes impacts on U.S. air carriers, including charter operations. The $2,000 per flight estimate is calculated using an air carrier-provided average additional fuel burn estimate for the deviation of 4,000 pounds of fuel, at the total system average fuel price for U.S. air carriers, $3.05 per gallon (''Fuel Cost and Consumption,'' US DOT Bureau of Transportation Statistics, Monthly report Jan. 2014), and a conversion factor of 6.84 pounds of fuel per gallon (Air BP Handbook of Products, Air BP Ltd 2000). Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

B. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign

commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from a potential hazard outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

C. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151.0 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

E. International Compatibility and Cooperation

(1) In keeping with U.S. obligations under the Chicago Convention, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

(2) Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The Russian Federation's unilateral attempt to establish a new FIR in Ukrainian territorial airspace and international airspace managed by Ukraine threatens to undermine the framework for international regulatory cooperation in civil aviation established under the Chicago Convention. This action by the FAA contributes to the international community's efforts to uphold that framework.

F. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

The FAA has reviewed the implementation of the proposed SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 312(f). The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the proposed action, the FAA finds that the proposed Federal action does not require preparation of an EA or EIS in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1E.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this immediately adopted final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal Document Management System (FDMS) Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the For Further Information Contact section at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ukraine.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504,

46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Add new § 91.1607 to subpart M to read as follows:

§ 91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in the Simferopol (UKFV) Flight Information Region (FIR).

(a) *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of U.S.-registered civil aircraft, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the portion of the Simferopol (UKFV) FIR within the following lateral limits: 454500N 0345800E–460900N 0360000E–460000N 0370000E–452700N 0364100E–452242N 0364100E–451824N 0363524E–451442N 0363542E–451218N 0363200E–450418N 0363418E–445600N 0363700E–443100N 0364000E–424400N 0361600E–424700N 0340000E–424800N 0304500E–434100N 0303200E–441500N 0302400E–444600N 0300900E–455400N 0322500E–454900N 0324700E–455400N 0330600E–455600N 0332700E–455900N 0332900E—then along the Crimea border to 454500N 0345800E. See Figure 1 below for a depiction of the affected airspace.

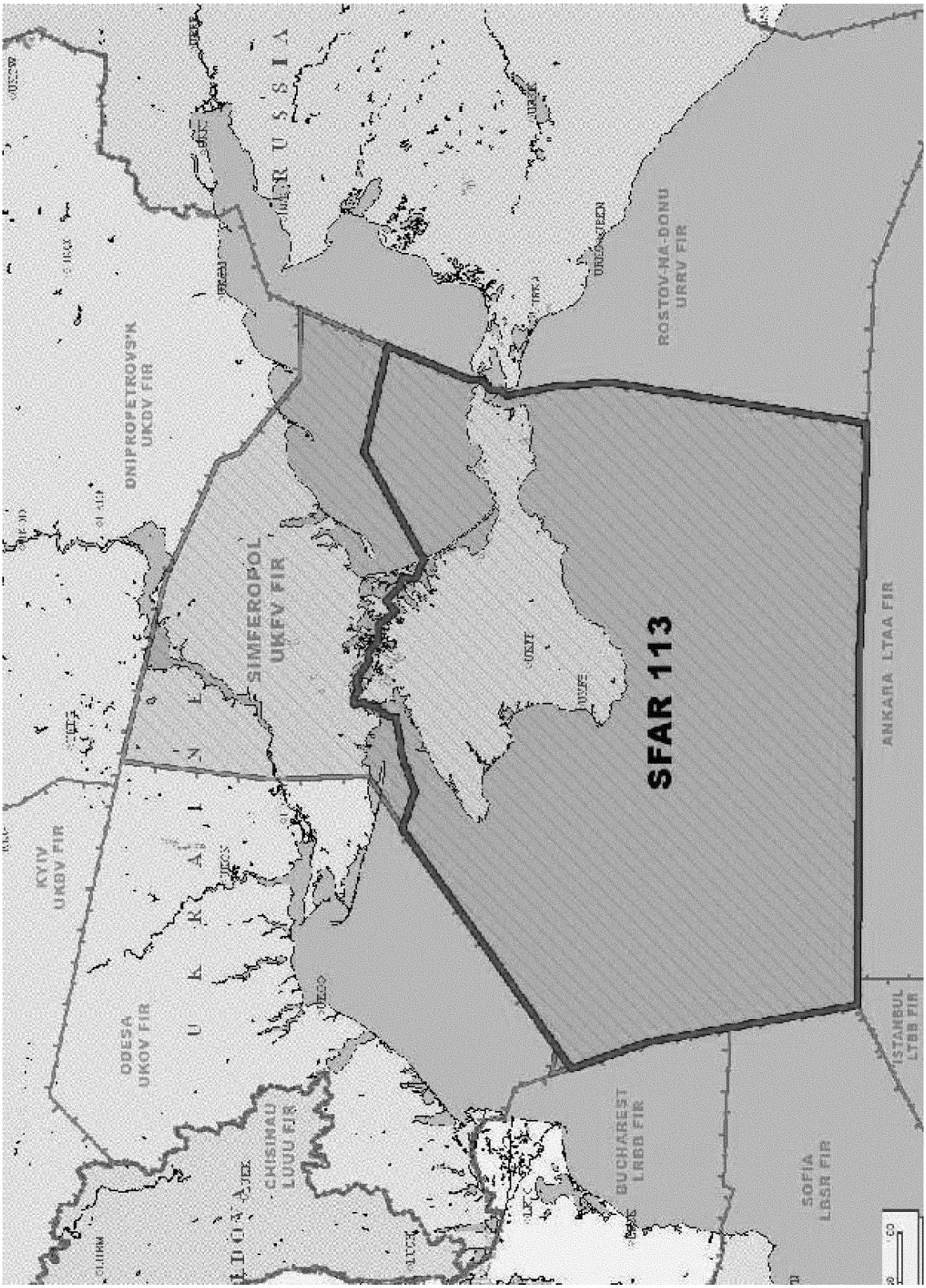
(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the portion of the Simferopol (UKFV) FIR described in paragraph (b) of this section, provided that such flight operations are conducted under a contract, grant or cooperative agreement with a department, agency, or instrumentality of the U.S. government with the approval of the FAA, or under an exemption issued by the FAA. The FAA will process requests for approval or exemption in a timely manner, with an order of preference being: first, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR parts 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office (FSDO) a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until April 27, 2015. The FAA may amend, rescind, or extend this SFAR as necessary.

BILLING CODE 4910–13–P

Figure 1: Depiction of Airspace Covered by SFAR 113



Issued under authority provided by 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), 44701(a)(5), in Washington, DC, on April 23, 2014.

Michael G. Whitaker,

Deputy Administrator.

[FR Doc. 2014–09545 Filed 4–23–14; 4:15 pm]

BILLING CODE 4910–13–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0236]

RIN 1625–AA00

Safety Zone for Fireworks Display, Patapsco River, Northwest Harbor (East Channel); Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing certain waters of the Patapsco River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a barge located adjacent to the East Channel of Northwest Harbor at Baltimore, MD on May 8, 2014. This safety zone is intended to protect the maritime public in a portion of the Patapsco River.

DATES: This rule is effective from April 25, 2014 through May 9, 2014 and enforceable from 7:30 p.m. on May 8, 2014 through 9:30 p.m. on May 9, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0236]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to the short time period between event planners notifying the Coast Guard of details concerning the event, on March 25, 2014, and publication of this safety zone. As such, it is impracticable to provide a full comment period due to lack of time. Furthermore, delaying the effective date of this safety zone would be contrary to the public interest given the high risk of injury and damage from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety. The permanent safety zones listed in the Table to 33 CFR 165.506 do not apply to this event.

B. Basis and Purpose

Under Armour, Inc., and InVNT, LLC of New York, NY, will sponsor a fireworks display launched from a barge located adjacent to the East Channel of Northwest Harbor in Baltimore, MD, scheduled on May 8, 2014 at 8:30 p.m. If necessary due to inclement weather, the fireworks display will be rescheduled to May 9, 2014.

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway before, during and after the scheduled event.

C. Discussion of the Final Rule

Through this regulation, the Coast Guard will establish a safety zone. The temporary safety zone will be enforced from 7:30 p.m. through 9:30 p.m. on May 8, 2014, and if necessary due to inclement weather, from 7:30 p.m. through 9:30 p.m. on May 9, 2014. The safety zone will encompass all waters of the Patapsco River, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 39°15′55″ N, longitude 076°34′33″ W, located adjacent to the East Channel of Northwest Harbor at Baltimore, Maryland, MD. This location is entirely within the Area of Responsibility of the Captain of the Port Baltimore, as set forth at 33 CFR 3.25–15.

The effect of this temporary safety zone will be to restrict navigation in the regulated area immediately before, during, and immediately after the fireworks display. Vessels will be allowed to transit the waters of the Patapsco River outside the safety zone.

This rule requires that entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone. To seek permission to transit the area of the safety zone, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the safety zone can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the safety zone. The Coast Guard will issue notices to the maritime community to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation restricts vessel traffic through the affected area, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. The Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit through or within, or anchor in, the safety zone during the enforcement period. The safety zone will not have a significant economic impact on a substantial number of small entities for the reasons provided under Regulatory Planning and Review.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone for a fireworks display. The fireworks are launched from navigable waters of the United States and may negatively

impact the safety or other interests of waterway users and near shore activities in the event area. The activity includes fireworks launched from barges near the shoreline that generally rely on the use of navigable waters as a safety buffer to protect the public from fireworks fallouts and premature detonations. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–0236 to read as follows:

§ 165.T05–0236 Safety Zone for Fireworks Display, Patapsco River, Northwest Harbor (East Channel); Baltimore, MD.

(a) *Location.* The following area is a safety zone: All waters of the Patapsco River, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 39°15′55″ N, longitude 076°34′33″ W, located adjacent to the East Channel of Northwest Harbor at Baltimore, Maryland. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0236.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed as directed while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

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

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement period.* This section is enforceable from 7:30 p.m. on May 8, 2014 through 9:30 p.m. on May 9, 2014.

Dated: April 8, 2014.

M.M. Dean,

Commander, U.S. Coast Guard, Acting Captain of the Port Baltimore.

[FR Doc. 2014–09500 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2014–0186]

RIN 1625–AA00

Safety Zone; Ohio River, Mile 803.5 to 804.5 Henderson, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Ohio River, beginning at mile marker 803.5 and ending at mile marker 804.5. This safety zone is necessary to provide safety for recreational boaters that will be spectators at the Henderson Breakfast Lions Club Tri Fest fireworks. Commercial vessels are prohibited from entering into this area and all vessels are prohibited from entering into the area between mile markers 803.5 and 804.5 unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or designated representative.

DATES: This rule is effective from 9:00 p.m. to 9:30 p.m. on April 25, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0186]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Stephen F. McConnell, U.S. Coast Guard; telephone 502–779–5334, email *Stephen.F.McConnell@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

APA Administrative Procedures Act
BNM Broadcast Notice to Mariners
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LNM Local Notice to Mariners
MM Mile Marker
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary

to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

Publishing an NPRM for this temporary rule is unnecessary as the public is already aware of this event through a current regulation, and this temporary rule changes the event from the third weekend of April to the fourth weekend of April. The current permanent safety zone for this event is under 33 CFR 165.801, Table 1, no. 12. However, that regulation only covers the third weekend in April. Based on future scheduling for this annual event, the Coast Guard has coordinated with the event sponsor to list the dates in the CFR as the third or fourth weekend in April. This date change is included in a project to update the list of recurring safety zones under 33 CFR 165.801, accounting for this event and other changes, however that rulemaking will not be published in time for this event.

Completing the NPRM process for this event is also contrary to the public interest since immediate action is necessary to ensure the public is protected from the hazards associated with a fireworks display over and on the Ohio River during the event. Additionally, this event has been advertised to and planned for by the local community and delaying or forgoing a safety zone may interfere with contractual obligations.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be contrary to public interest because immediate action is needed to protect life and property from the hazards associated with an air show and fireworks display over the waterway.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define safety zones.

The Henderson Breakfast Lions Club Tri Fest event, including a fireworks display over and on the Ohio River, will take place on April 25, 2014. Due to the possible hazards associated with this event, the COTP Ohio Valley is establishing a safety zone for all waters of the Ohio River beginning at mile marker 803.5 and ending at mile marker 804.5. This safety zone is necessary to provide safety for the public and marine traffic that will be in the area, including the recreational boaters and spectators attending the Henderson Breakfast Lions Club Tri Fest event on the Ohio River.

A permanent safety zone for this event is currently published under 33 CFR 165.801, as referenced above. This temporary rule is necessary to move the event from the third weekend of April to the fourth weekend of April.

C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a safety zone for all vessel traffic on the Ohio River between mile 803.5 and mile 804.5, extending the entire width of the Ohio River. Transit into and through this area is prohibited effective from 9:00 p.m. to 9:30 p.m. on April 25, 2014. Deviation from this safety zone is prohibited unless specifically authorized by the COTP Ohio Valley, or a designated representative. Deviation requests will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by telephone at 1–502–779–5424 or can be reached by VHF–FM channel 16. The COTP Ohio Valley will inform the public through broadcast notices to mariners (BNM) of the enforcement period for the safety zone as well as any changes in the planned schedule.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule establishes a temporary safety zone, effective from 9:00 p.m. to 9:30 p.m. on April 25, 2014, for vessels on all waters of the Ohio River from mile 803.5 to mile 804.5. Notifications of enforcement times will be communicated to the marine community via BNM and through local notice to mariners (LNM). The impacts on navigation will be limited to protecting persons and property from the potential hazards associated with the Henderson Breakfast Lions Club Tri Fest fireworks.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Ohio River, from 9:00 p.m. to 9:30 p.m. on April 25, 2014. This safety zone will not have a significant economic impact on a substantial number of small entities due to its limited scope and short duration. Additionally, requests to deviate from the rule will be considered on a case-by-case basis. Notifications to the marine community will be made through BNM, LNM, and communications with local waterway users. Notices of changes to the safety zone and effective times will also be made.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. This rule involves establishing a temporary safety zone to provide safety for the recreational boaters that will be spectators at the Henderson Breakfast Lions Club Tri Fest event.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–305, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0186 is added to read as follows:

§ 165.T08–0186 Safety Zone; Ohio River, Miles 803.5 to 804.5, Henderson, KY.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River between mile 803.5 and mile 804.5, Henderson, KY, extending the entire width of the Ohio River.

(b) *Effective dates.* This section is effective from 9:00 p.m. to 9:30 p.m. on April 25, 2014.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port (COTP) Ohio Valley or a designated representative.

(2) Persons or vessels desiring to enter into or pass through the safety zone must request permission from the COTP Ohio Valley or a designated representative. They may be contacted on VHF–FM channel 16 or by telephone at 1–502–5424.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP Ohio Valley or designated representative.

(d) *Informational Broadcasts.* The COTP Ohio Valley or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned dates and times of enforcement.

Dated: April 4, 2014.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2014–09382 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 201

[Docket ID: FEMA–2012–0001]

RIN 1660–AA77

Change in Submission Requirements for State Mitigation Plans

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This Final Rule revises the Federal Emergency Management Agency

(FEMA) regulations by changing submission requirements for State Mitigation Plans. This Final Rule reduces the frequency by which States must submit updates to FEMA on their State Mitigation Plans. Previously, these entities prepared and submitted updates with FEMA for review and approval every 3 years. Now, these entities will prepare and submit updates with FEMA for review and approval every 5 years.

DATES: Effective May 27, 2014. Comments regarding the information collection must be submitted on or before May 27, 2014.

ADDRESSES: Comments and related materials are available online by going to *www.regulations.gov*, and inserting FEMA–2012–0001 in the ''Search'' box, and then clicking ''Search''.

Submit written comments on the information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, Division Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598–3030. Phone: (202) 646–2903. Facsimile: (202) 646–2787. Email: *doug.bellomo@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR—Code of Federal Regulations
DHS—Department of Homeland Security
DMA 2000—Disaster Mitigation Act of 2000
EA—Environmental Assessment
EIS—Environmental Impact Statement
FEMA—Federal Emergency Management Agency
FMA—Flood Mitigation Assistance
HMA—Hazard Mitigation Assistance
HMGP—Hazard Mitigation Grant Program
IFR—Interim Final Rule
NEMA— National Emergency Management Association
NEPA—National Environmental Policy Act of 1969
NPRM—Notice of Proposed Rulemaking
OMB—Office of Management and Budget
PDM—Pre-Disaster Mitigation
PRA—Paperwork Reduction Act of 1995
RIN—Regulatory Identifier Number
Stafford Act—Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended

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I. Basis and Purpose

This Final Rule will change the frequency of State Mitigation Plan updates, by extending the update requirement for States from every 3 years to every 5 years. Currently, State, Tribal, and Local Mitigation Plans submissions are on different schedules: Tribal and local governments submit Mitigation Plan updates to FEMA every 5 years, while States submit their mitigation plan updates—both the Standard and the Enhanced Mitigation Plan [1] updates—to FEMA every 3 years.[2] The Final Rule will put all State, Local, and Tribal Mitigation Plan updates on the same schedule.

FEMA plans to change the frequency of the update requirement for several reasons. First, the proposed reduction in update frequency will reduce the regulatory burden on States as well as burden on FEMA. Second, aligning the update frequency with local and Tribal update requirements may foster closer coordination of mitigation planning and implementation efforts. Third, by relieving the regulatory burden imposed from the frequency of State plan updates, States and FEMA may be able to shift resources from the update and review cycle to other mitigation planning activities, such as increased delivery of training and technical assistance to support local and Tribal Mitigation Planning, and to implement additional mitigation actions identified through the planning process.

II. Background

Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. The purpose of hazard mitigation planning is to identify policies and actions that can be implemented over the long-term to reduce risk and future losses. Mitigation plans form the foundation for a community's long-term strategy to reduce disaster losses and break the cycle of disaster damage, reconstruction, and repeated damage. The planning process is as important as the plan itself. It creates a framework for risk-based decision making to reduce damage to lives, property, and the economy from future disasters. State, Tribal, and local governments benefit from mitigation planning by identifying publicly-accepted cost-effective actions for risk reduction, focusing resources on the greatest risks and vulnerabilities, and building partnerships by involving people, organizations, and businesses. The planning process, and mitigation plans, foster education and awareness of hazards and risk, communicate priorities to State and Federal officials, and align risk reduction with other community objectives, such as community development. State, Tribal, and local governments are required to develop a hazard mitigation plan as a condition for receiving certain types of Federal non-emergency disaster assistance.

A. Disaster Mitigation Act of 2000

The Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106–390, 114 Stat. 1552, amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and provided an opportunity for States, Tribes, and local governments to take a new and revitalized approach to mitigation planning. Section 104 of DMA 2000 continued the requirement for a State mitigation plan as a condition of non-emergency Stafford Act assistance and FEMA mitigation grants, and created incentives for increased coordination and integration of mitigation activities at the State level. DMA 2000 repealed section 409 of the Stafford Act, which required mitigation plans and the use of minimum standards, and replaced it with two separate sections of the law: Mitigation

[1] State Mitigation Plans are divided into tiers: Standard State Mitigation Plans and Enhanced State Mitigation Plans. Enhanced State Mitigation Plans have additional requirements and, for States that comply with the additional requirements, allow for additional disaster funding.

[2] In addition to States, Tribal Governments can also submit Enhanced State Mitigation Plans. This Final Rule reduces the frequency for those Tribes who choose to submit Enhanced State Mitigation Plans; FEMA will now require these updates every 5 years (no longer every 3 years).

planning in section 322 (codified at 42 U.S.C. 5165), and minimum codes and standards in section 323 (codified at 42 U.S.C. 5165a). FEMA previously implemented section 409 through 44 CFR part 206, Subpart M. The DMA 2000 planning requirements were placed in 44 CFR part 201 to reflect the broader relevance of planning to all FEMA mitigation programs, while the minimum codes and standards remained in 44 CFR part 206, Subpart M.

Section 104 of DMA 2000 and FEMA's implementing regulations emphasize the need for State, Tribal, and local entities to closely coordinate mitigation planning and implementation efforts. The planning process provides a link between State, Tribal and local mitigation programs. Both State level and local plans should incorporate mitigation implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference hazardous materials and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster.

DMA 2000 included a provision for increased Federal funding for hazard mitigation measures for States with approved mitigation plans. 42 U.S.C. 5165(e). FEMA implemented this provision through development of a new two-tiered State mitigation plan process: Standard State Mitigation Plans, which allow a State to receive Hazard Mitigation Grant Program (HMGP) funding ranging from 7.5 to 15 percent of disaster grants awarded by FEMA, depending on the total estimated eligible Stafford Act disaster assistance, 44 CFR 206.432(b)(1); and Enhanced State Mitigation Plans, which allow a State to receive HMGP funds based on 20 percent of the total estimated eligible Stafford Act disaster assistance. 44 CFR 206.432(b)(2); 44 CFR 201.5. Enhanced State Mitigation Plans must meet the requirements for Standard State Mitigation Plans at 44 CFR 201.4 and must demonstrate further that the State has developed a comprehensive mitigation program, that it effectively uses available mitigation funding, and that it is capable of managing the increased funding. 44 CFR 201.5.

B. Hazard Mitigation Assistance

FEMA Hazard Mitigation Assistance (HMA) grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. In general, under each of the three HMA programs, the update of State mitigation plans is eligible for funding.

Currently, FEMA administers the following HMA grant programs:

- HMGP assists in implementing long-term hazard mitigation measures following Presidential disaster declarations. 44 CFR 206.434(c)(5)(iv). Funding is available to implement projects in accordance with State, Tribal, and local priorities. 44 CFR 206.435. HMGP grants may fund the updating of mitigation plans. 44 CFR 206.434. States must have a FEMA-approved State (Standard or Enhanced) Mitigation Plan at the time of the disaster declaration and at the time HMGP funding is obligated to the Grantee to receive an HMGP award. 44 CFR 201.4(a) and 201.5(a).
- Pre-Disaster Mitigation (PDM) provides funds on an annual basis for hazard mitigation planning and the implementation of mitigation projects prior to a disaster. 42 U.S.C. 5133. The goal of the PDM program is to reduce overall risk to the population and structures, while at the same time reducing reliance on Federal funding from actual disaster declarations. 42 U.S.C. 5133. States must have a FEMA-approved State (Standard or Enhanced) Mitigation Plan by the application deadline and at the time of obligation of the grant funds. 44 CFR 201.4(a) and 201.5(a).
- Flood Mitigation Assistance (FMA) Program provides funds on an annual basis for flood mitigation planning and the implementation of flood mitigation projects. 42 U.S.C. 4104c. The goal of the FMA Program is to reduce or eliminate claims under the National Flood Insurance Program. 44 CFR 78.1(b). The Biggert-Waters Flood Insurance Reform Act of 2012, Public Law 112–141, 126 Stat. 916, eliminated the Severe Repetitive Loss and the Repetitive Flood Claims programs and changed the FMA program to assist mitigation of repetitive loss and severe repetitive loss properties. States must have a FEMA-approved State (Standard or Enhanced) Mitigation Plan by the application deadline and at the time of obligation of the grant funds. 44 CFR 201.4(a) and 201.5(a).

FEMA-approved hazard mitigation plans developed under 44 CFR part 201 are used by FEMA to determine State and Tribal eligibility for Stafford Act assistance, including HMGP and PDM grant funds, and for FMA funding under the National Flood Insurance Act.

FEMA HMA grants are provided to eligible applicants (States/Tribes/Territories) for eligible activities, who, in turn, provide subgrants to local governments and other eligible entities. Subgrantees may be a State agency, local government, private non-profit organization (for HMGP only), or Indian Tribal government. The applicant selects and prioritizes subapplications developed and submitted to them by subapplicants. These subapplications are submitted to FEMA for consideration of funding. An Indian Tribal government may have the option to apply for HMA grants through the State as a subapplicant or directly to FEMA as an applicant. Indian Tribal governments acting as a subgrantee are accountable to the State grantee.

C. Regulatory History

FEMA's February 26, 2002 Interim Final Rule (IFR), entitled ''Hazard Mitigation Planning and Hazard Mitigation Grant Program,'' 67 FR 8844, implemented section 322 of the Stafford Act by adding a new Part 201 to 44 CFR. The IFR required that Standard State Mitigation Plans be updated by November 1, 2003 [3] and resubmitted to the appropriate Regional Director for approval every 3 years from the date of the approval of the previous plan in order to continue program eligibility. Additionally, the IFR provided criteria for Enhanced State Mitigation Plans and required that for States to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation Plan must be approved by FEMA within the 3 years prior to the current major disaster declaration, and resubmitted for approval every 3 years. On October 31, 2007, FEMA published a Final Rule adopting, without substantive changes, the requirements for hazard mitigation planning pursuant to section 322 of the Stafford Act. 72 FR 61552.

Table 1 displays the regulatory history for the mitigation planning requirements listed in §§ 201.3–201.5 for the Standard and Enhanced State Mitigation Plan reporting requirements. Currently, these Plans have to be updated every 3 years.

[3] An October 1, 2002 revision changed the date by which the Standard State Mitigation Plans had to be updated from November 1, 2003 to November 1, 2004. 67 FR 61512. A subsequent revision provided for a 6-month extension, up to May 1, 2005, at the request of the Governor or Indian Tribal leader. 69 FR 55094.

TABLE 1

RIN	Action	Date	**Federal Register** citation	Effect on §§ 201.3, 201.4, & 201.5	Changes to State Mitigation Plan requirements
3067–AD22	IFR	2/26/02	67 FR 8844	Added §§ 201.3, 201.4, & 201.5.	States must have approved Standard State Mitigation Plan by November 1, 2003 and every 3 years from the date of the approval of the previous plan. Enhanced State Mitigation Plans resubmitted to the appropriate Regional Director every 3 years. For State to be eligible for 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 3 years prior to current major disaster declaration.
3067–AD22	IFR	10/1/02	67 FR 61512	Revised § 201.3 and § 201.4.	Changed the requirement to update the Standard State Mitigation Plan to November 1, 2004.
1660–AA17 [4]	IFR	9/13/04	69 FR 55094	Added § 201.3(c)(7) & Revised § 201.4.	Allowed a 6 month extension to the deadline for the Standard State Mitigation Plan, up to May 1, 2005.
1660–AA17	Final Rule	10/31/07	72 FR 61552	Finalized Part 201	Corrected a typographical error in 201.4(c)(2)(ii).
1660–AA36	IFR	10/31/07	72 FR 61720	Revised § 201.3	Removed references to November 1, 2004 deadline and made technical corrections.
1660–AA36	Final Rule	9/16/09	74 FR 47471	Finalized § 201.3	No changes.

[4] The RIN changed from 3067–AD22 to 1660–AA17, as a result of FEMA becoming a component of the Department of Homeland Security.

D. Discussion of Public Comments and Final Rule

On March 1, 2013, FEMA published the ''Change in Submission Requirements for State Mitigation Plans'' Notice of Proposed Rulemaking (NPRM) at 78 FR 13844. The NPRM proposed to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years.

The comment period closed on April 30, 2013. FEMA received twenty-three comments in response to the NPRM. Of the 23 comments received, 21 comments were supportive, 1 comment was opposed, and 1 comment was not germane. Following is a discussion of the comments submitted.

The 21 comments submitted in support of the NPRM came from a variety of sources, including State and local governments, associations, and commenters that chose to remain anonymous. Many of the supportive comments cited reasons consistent with the rationale provided in the NPRM (78 FR 13847), such as:

- reducing the regulatory burden on States and those Indian Tribal governments that may choose to develop Enhanced Mitigation Plans;
- aligning with the local and Tribal Mitigation Plan update requirements, which may foster closer coordination of mitigation planning and implementation efforts; and
- relieving the regulatory burden, so resources may be shifted to other mitigation planning activities, such as increased delivery of training and technical assistance, and/or to implementing additional mitigation actions.

Several comments cited additional reasons in support of the NPRM, such as:

- maintaining or improving the quality of the plans and/or program;
- facilitating better data sharing;
- improving integration and coordination with other planning cycles; and
- providing a more realistic time frame for implementation of the mitigation plan.

Six comments referenced or included information regarding costs for mitigation plan updates. Such mitigation plan update cost estimates were consistent with the estimates FEMA used to calculate the impacts of the rule.

One comment was supportive of the NPRM, provided that planners remain engaged in mitigation planning and implementation, presuming a best practice of annual review and evaluation. The current mitigation planning regulation requires States to include a plan maintenance process that establishes the method and schedule for monitoring, evaluating, and updating the plan (44 CFR 201.4(c)(5)). Through guidance, FEMA encourages, but does not require, States to perform an annual evaluation of the plan, including any changes to the nature and magnitude of hazards, as well as the effectiveness of programs, policies, and projects.

While supportive of the NPRM, one comment indicated that a 7-year cycle would be even better. Additional cost savings from a 7-year cycle compared to a 5-year cycle is approximately $857,000 ($2,855,833 annualized 7-year cost savings − $1,999,083 annualized 5-year cost savings = $856,750). The following table highlights costs over 3, 5, and 7 years, as well as provides a comparison.

TABLE 2

State plan type	Mitigation plan update unit cost	Update cost over 3 years	Update cost over 5 years	Update cost over 7 years	7 years vs. 3 years	7 years vs. 5 years	5 years vs. 3 years
Standard Plan Update	$205,000	$68,333	$41,000	$29,286	−$39,047	−$11,714	−$27,333

TABLE 2—Continued

State plan type	Mitigation plan update unit cost	Update cost over 3 years	Update cost over 5 years	Update cost over 7 years	7 years vs. 3 years	7 years vs. 5 years	5 years vs. 3 years
Enhanced Plan Update	$524,000	$174,667	$104,800	$74,857	−$99,810	−$29,943	−$69,867

Values rounded to nearest dollar which distorts overall reduction over time (e.g. 15 years, 21 years, 35 years).

FEMA acknowledges that additional cost savings may be realized from a 7-year update cycle, but FEMA reaffirms the benefits of the 5-year update cycle as stated in the NPRM that lengthening the State Mitigation Plan update cycle to 5 years aligns with the local and Tribal Mitigation Plan update requirements and may foster closer coordination of mitigation planning and implementation efforts. Further, as stated in the NPRM, stakeholders, such as the National Emergency Management Association (NEMA) and Members of Congress, have asked FEMA to amend 44 CFR Part 201 to extend the update cycle and have consistently cited 5 years. The NPRM cited a letter dated November 8, 2011 from 23 Members of Congress stating:

> [m]aintaining high quality up-to-date mitigation plans is a critical component of our national disaster response plan. Extending the update cycle to [5] years would ensure that our [S]tate planning offices can complete this vital task, along with their other duties, while maximizing available resources.

The NPRM also stated that in 2011, the Department of Homeland Security (DHS) received public comments on the mitigation planning regulations in response to a **Federal Register** notice published as part of a retrospective review of its regulations. According to DHS's final report titled ''Final Plan for the Retrospective Review of Existing Regulations'' dated August 22, 2011 (See page 16),

> DHS received a comment (the top-voted comment mentioned above) recommending that DHS change the current FEMA State Standard and Enhanced Hazard Mitigation Plan update requirement from every [3] years to every [5] years so that it is consistent with current Local Hazard Mitigation Plan update requirements. Commenters asserted that [5] years would be an appropriate timeframe for [S]tate mitigation plan updates for both efficiency and resource-limitation reasons.

Extending the update cycle from 3 to 7 years does not align with the current local and Tribal mitigation planning 5-year update cycle. Additionally, based on the majority of responses from stakeholders, FEMA has chosen not to pursue the suggestion of extending the update cycle from 3 to 7 years.

Only one comment, submitted by a non-profit environmental advocacy organization, opposed the NPRM. The comment was submitted to the docket in the form of a letter along with more than 90 individual documents totaling almost 7,900 pages (after accounting for documents submitted in multiple parts and elimination of duplication). The letter cited to 11 of the attachments that the commenter submitted to the docket by footnoting them. Other than the letter, none of the supporting attachments referenced the NPRM. As a result, no response is provided to the attachments.

The remainder of this section will address the comment from the non-profit environmental advocacy organization that opposed the NPRM because, as it stated:

> the extension is not accompanied by requirements to ensure the quality of the State Mitigation Plans increases to compensate for less frequent updates. FEMA must ensure that the State Mitigation Plans are as effective and as timely as possible since hazard mitigation planning is critical to reduce risks to the public and to improve safety and health. To proceed with the proposed extension as currently articulated is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law.

The comment asserted that if the State Mitigation Plans do not incorporate the most current climate change studies and modeling, FEMA's NPRM would lead to plans losing relevance and becoming outdated more quickly, due to climate change implications, and the quality of hazard mitigation would suffer. The comment further stated that:

> If the [S]tate update requirement is extended, FEMA should take this opportunity to ensure that [S]tates use the extra [2] years to significantly improve their plans, especially regarding climate change. States tend to rely exclusively on historical data to predict the probability of future hazard events, and determine priorities for mitigation. Unfortunately, most [S]tates are not incorporating climate change projections and therefore are not maximizing accuracy of hazard predictions in risk assessments. FEMA should only approve State Hazard Mitigation Plans that adequately address climate change. FEMA also should provide agency guidance in FEMA's Blue Book on how to incorporate climate change into such plans. In addition to the current proposed rulemaking, FEMA should also initiate another new rulemaking to amend 44 CFR § 201.4, in order to confirm that climate change must be addressed by [S]tates in their hazard mitigation plans.

As stated in the NPRM, in order to be effective, plans must be relevant. Therefore, 44 CFR 201.4(d) requires that the plans be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities. Mitigation planning is a continuous process of engaging stakeholders, identifying hazards as conditions may change, assessing risk and vulnerabilities as development patterns may change, and developing a strategy that can be implemented using available resources, programs, and initiatives based on current priorities.

The purpose of the NPRM is only to extend the update requirement from 3 to 5 years and does not change the requirements for the content of the Mitigation Plan. While section 201.4(c)(2) does not list or require specific hazards be addressed in the Mitigation Plan, States are required to include an overview of the type and location of all natural hazards that can affect the State. In fact, 44 CFR 201.4(c)(2)(i) requires the Mitigation Plan to contain information not only on previous occurrences but on the probability of future hazard events. This approach allows States discretion in meeting the Federal mitigation planning requirements and recognizes differences that exist among State governments with respect to capability and resources as well as variations in vulnerability within the planning area.

In addition, the FEMA Climate Change Adaptation Policy Statement (2011–OPPA–01) affirms the need to address risks that may be linked to climate change and identifies initial actions within existing statutes and authorities to help integrate climate change adaptation considerations into FEMA programs. Further, the President's Climate Action Plan, released in June 2013, identifies three major initiatives to prepare the United States for the impacts of climate change by building stronger and safer communities and infrastructure, protecting our economy and natural resources, and using sound science to

manage climate impacts. FEMA is committed to working with partners to improve the relevance and effectiveness of mitigation planning to increase the Nation's resilience through improvements to policy, guidance, training, technical assistance, as well as other products.

FEMA encourages States to fully engage in the mitigation planning process and, as stated in 44 CFR 201.4(b), to include coordination with other State agencies, appropriate Federal agencies, and interested groups. FEMA also encourages States to integrate their mitigation planning to the extent possible with other ongoing State planning efforts and other FEMA mitigation programs and initiatives. By fully leveraging the mitigation planning process, States may be better able to identify and incorporate the best available data, studies, and models to assess changes in current and future hazards as well as development patterns that may impact vulnerability. Further, States may be better able to develop and implement a plan maintenance process that ensures plan relevance over time. The accuracy and relevance of the plan are important elements to ensure that resources are wisely invested in implementing measures to reduce risk from future events. As stated in the NPRM and the planning regulations at 44 CFR 201.4(a), the mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards.

The comment suggests that FEMA initiate another rulemaking requiring States to address climate change in State Mitigation Plans. The current regulation requires the State to include information on future hazard events in its Mitigation Plan and allows the State discretion whether to address climate change. 44 CFR 201.4(c)(2)(i).

The comment also encourages FEMA to implement an ''administrative trigger'' meaning that following a ''major climate-sensitive hazard event,'' if the plan did not adequately address climate change, the State would be required to initiate an update; and if the State did not incorporate new information into the plan, FEMA hazard mitigation funding should be withheld. FEMA encourages States to review the plan after disasters and update, if needed, to reflect changes in priorities. States may also consider use of FEMA's Hazard Mitigation Grant Program planning grants for planning related activities to update risk assessments after catastrophic events. FEMA will work with States post disaster, based on availability of resources and funding, to review the State Mitigation Plan, in particular the risk assessment and mitigation strategies, to guide implementation of mitigation actions and the development of a recovery strategy as outlined in the National Disaster Recovery Framework. Requiring plan updates using an administrative trigger would require a change to the mitigation planning regulation. FEMA has chosen not to initiate another rulemaking to implement an administrative trigger, so as not to increase the burden on States and FEMA, but will continue to monitor the necessity of initiating another rulemaking requiring States to review the plan after disasters and update, if needed, to reflect changes in priorities.

As previously stated in the preamble, the vast majority of respondents supported the regulatory change proposed in the March 1, 2013 NPRM; therefore, FEMA is adopting as final the NPRM (78 FR 13844, Mar. 1, 2013) without change.

E. Implementation

The Standard State Mitigation Plan and the Enhanced State Mitigation Plan updates will be due 5 years from the date of the approval of the previous plan.

III. Regulatory Analyses

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, Oct. 4, 1993) as supplemented by Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, Jan. 21, 2011). This Final Rule is not a significant regulatory action, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This portion of the preamble summarizes FEMA's analysis of the economic impacts of this Final Rule. However, readers seeking greater detail are encouraged to read the full regulatory evaluation, a copy of which FEMA has placed in the docket for this rulemaking.

In conducting the aforementioned analyses, FEMA has determined that the Final Rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) will not have a significant economic impact on a substantial number of small entities; and (4) will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding $100 million or more annually (adjusted for inflation with a base year of 1995). These analyses are summarized below.

Who Is Potentially Affected by This Rule

The Final Rule will affect States that choose to submit updated Standard State Mitigation Plans or Enhanced State Mitigation Plans to FEMA for approval, and Indian Tribal governments that choose to meet the requirements for Enhanced State Mitigation Plans in order to qualify for increased HMGP funding.

Savings to Society of This Rule

The cost to update a State's Mitigation Plan is unique to that respective State. However, for the purposes of this analysis, FEMA estimates an average Standard State Mitigation Plan update unit cost of $205,000 and an Enhanced State Mitigation Plan update unit cost of $524,000.[5] FEMA also assumes that 46 States would submit Standard State Mitigation Plans and 10 States would submit Enhanced State Mitigation Plans.

FEMA will also incur costs to review State Mitigation Plans. FEMA estimates that a General Schedule 13, Step 1, Federal employee, at a fully loaded wage of $48.08 ($34.34*1.4 = $48.076) will spend 120 hours reviewing a Standard or Enhanced State Mitigation Plan. The resulting FEMA review cost per plan is $5,770 (120 hours * $48.08 per hour = $5,769.60).

Therefore, the cost of State Mitigation Plan updates in a given year, where all

[5] These plan update costs reflect cost and burden estimates in section III. D. (''Paperwork Reduction Act (PRA) of 1995''). In section III. D., ''hour burden'' in Table 3 is calculated by taking 23 percent of the State Mitigation Plan update cost, which represents personnel costs, and dividing it by the estimated Urban and Regional Planners wage rate of $45.33. This equates to 1,040 hours (($205,000 × 0.23)/$45.33 = 1,040.15) for Standard State Mitigation Plan updates and 2,659 hours (($524,000 × 0.23)/$45.33 = 2,658.72) for Enhanced State Mitigation Plan updates. Additionally, 66 percent of the State Mitigation Plan update cost represents contracting costs and 11 percent of the State Mitigation Plan update cost represents non-labor costs (for both standard and enhanced plan updates). The contracting and non-labor costs are used to estimate the ''cost burden'' in Table 4 below. For Standard State Mitigation Plan updates, this equates to $135,300 ($205,000 × 0.66 = $135,300) ''annual operations and maintenance costs'' and $22,550 ($205,000 × 0.11 = $22,550) for ''annual non-labor costs''. For Enhanced State Mitigation Plan updates, this equates to $345,840 ($524,000 × 0.66 = $345,840) ''annual operations and maintenance costs'' and $57,640 ($524,000 × 0.11 = $57,640) for ''annual non-labor costs''.

updates are submitted, is approximately $15 million (($205,000 + $5,770)*46 + ($524,000 + $5,770)*10 = $14,993,120). The extension of the State Mitigation Plan update frequency from 3 to 5 years will reduce the number of State Mitigation Plan updates submitted by 2 over 15 years. The resulting undiscounted total cost savings is approximately $30 million over 15 years ($14,993,120 * 2 = $29,986,240); or, $18.8 million total cost savings over 15 years if discounted at 7 percent. The annual impact of this rule is approximately $2 million undiscounted ($29,986,240 ÷ 15 = $1,999,083) and $2.06 million annualized at 7 percent.[6]

Benefits of This Rule

The Final Rule will provide a number of unquantified benefits including aligning the State Mitigation Plan update cycle with the Local and Tribal Mitigation Plan update cycle and providing greater flexibility for States to submit their State Mitigation Plan updates. The rule will also provide an opportunity for States to apply cost savings from the reduction in State Mitigation Plan update frequency to other means of increasing resilience and reducing the Nation's risk to natural hazards.

Significance Determination

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule.

The rule is estimated to have a net quantified undiscounted savings to society of approximately $30 million over 15 years. The annual impact of this rule is an estimated net quantified savings to society of approximately $2 million undiscounted ($1,999,083) and $2.06 million annualized at 7 percent.

Retrospective Review

To facilitate the periodic review of existing significant regulations, Executive Order 13563 requires agencies to consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The Executive Order requires agencies to issue a retrospective review plan, consistent with law and the agency's resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

DHS issued its ''Final Plan for the Retrospective Review of Existing Regulations'' (Plan) on August 22, 2011. The Plan can be found on the DHS Open Government Web site at *http://www.dhs.gov/xlibrary/assets/dhs-ogc-final-retrospective-review-plan-8-22-11-final.pdf.* DHS originally included this rule in the Plan as a long-term retrospective review candidate, meaning the agency would undertake retrospective review of the regulation within 3 years of the date of the Plan. The Plan stated that FEMA would consider whether it would be more efficient to extend the review period to 5 years for each of the plans as requested by public commenters. DHS later moved this rule (1660–AA77) to its list of current retrospective review projects.

DHS publishes periodic updates on the progress of its retrospective review efforts. DHS published its most recent update, ''DHS Retrospective Review Plan Report,'' in January 2014. That update can be found on the DHS Open Government Web site at *http://www.dhs.gov/publication/dhs-january-2014-retrospective-review-plan-report.*

Review of FEMA's existing Mitigation Plan regulations revealed the potential for State cost savings, approximately $30 million over 15 years, as well as other benefits. Therefore, FEMA is extending the State Mitigation Plan minimum update frequency from 3 to 5 years.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), FEMA evaluated and considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

In the March 1, 2013 NPRM, FEMA invited comments on the initial Regulatory Flexibility Act (RFA) determination. FEMA did not receive any comments regarding the RFA determination. As the Final Rule will not result in additional costs, FEMA does not anticipate that the rule will have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to assess the effects of their discretionary regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. As the Final Rule will not have an impact greater than $100,000,000 or more in any one year, it is not an unfunded Federal mandate.

D. Paperwork Reduction Act (PRA) of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

In this Final Rule, FEMA is seeking a revision to the already existing collection of information identified as OMB Control Number 1660–0062. This revision reflects the reduction in the annual cost burden to respondents or recordkeepers resulting from the Final Rule, as well as refinements to current estimates in 1660–0062 based on changes to the way cost burden is reported under the PRA. Annual cost burden was previously derived from multiplying total annual burden hours, based on subject matter expert average hour estimates per mitigation plan, by the associated wage rates. However, FEMA has refined how it calculates annual costs and now uses cost estimates based on historical mitigation plan grant data, which includes contract support and other associated costs. This Final Rule serves as the 30-day comment period for this change

[6] In Appendix A of the Regulatory Evaluation available in the docket, FEMA includes estimated annualized costs at three and seven percent according to guidance in OMB Circular A–4 (page 45). Office of Management and Budget, Published September 17, 2003. Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.*

pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the collection of information.

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans.

Type of information collection: Revision of a currently approved collection.

OMB Number: 1660–0062.

Form Titles and Numbers: None.

Abstract: The purpose of State, Local, and Tribal Hazard Mitigation Plan requirements is to support the FEMA Mitigation grant programs, and a significant State, local, and Tribal commitment to mitigation activities, comprehensive mitigation planning, and strong program management. Implementation of planned, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals and priority to reduce risks from natural hazards. This Final Rule revises FEMA Mitigation Planning regulations in order to reduce the frequency that respondents submit Standard State and Enhanced State Mitigation Plan updates from 3 to 5 years. This change in frequency will reduce 8,899 burden hours on the public and save $1,350,580 annually in respondent burden costs. Due to the change in reporting methods described above, the base line numbers have changed, resulting in an overall increase in the estimated total annual cost. This impact is separate from the effect of the Final Rule.

Affected Public: State, local, or Tribal Governments.

Estimated Number of Respondents: 56 States submit State Mitigation Plan updates to FEMA. (There are 56 States, per the definition of State at 44 CFR 201.2.) In addition, those 56 States also review and submit Local and Tribal Mitigation Plans and plan updates to FEMA.

Estimated Total Annual Burden Hours: 227,366 hours.

The previously approved Total Annual Burden Hours was 768,320 hours. Based on adjustments to how this burden was estimated (see Information Collection Request for details) and the rule's reduction in burden, the new estimated Total Annual Burden Hours is 227,366 hours. This is a decrease of 540,954 hours, of which approximately 8,899 hours are attributed to the change in State Mitigation Plan update frequency. However, some of the burden hours previously accounted for likely reflected some of the costs, including contract support, now included in the separately-reported categories under total annual cost burden.

Table 3 provides estimates of annualized cost to respondents for the hour burdens for the collection of information.

TABLE 3

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent [1]	Total number of responses [2]	Average burden per response (hours)	Total annual burden (hours)	Average hourly wage rate [3]	Total annual respondent cost [4]
Local or Tribal Government.	New Local and Tribal Plans.	56	5	280	289	80,920	$45.33	$3,668,104
Local or Tribal Government.	Local and Tribal Plan Updates.	56	9	504	249	125,496	45.33	5,688,734
State Government	State Review of Local and Tribal Plans.	56	14	784	8	6,272	45.33	284,310
State Government	Standard State Plan Updates.	46	0.2	9	1,040	9,360	45.33	424,289
State Government	Enhanced State Plan Updates.	10	0.2	2	2,659	5,318	45.33	241,065
Total	.....	56	.....	1,579	.....	227,366	.....	10,306,502

[1] Standard State Plan Updates and Enhanced State Plan Updates Number of Responses per Respondent represents an annual average over 5 years (1 plan update/5 years = 0.2).
[2] Standard State Plan Updates Total Number of Responses is rounded to the nearest plan.
[3] The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a loaded wage rate and rounded to the nearest cent.
[4] Rounded to the nearest dollar.

Estimated Total Annual Cost: $33,532,730.

The previously approved Total Annual Cost was $33,452,652. Based on adjustments to how this cost was estimated (see Information Collection Request for details) and the rule's reduction in cost, the new estimated Total Annual Cost is $33,532,730. This is an increase of $80,078. This includes a $1,350,580 reduction in cost attributed to the change in State Mitigation Plan update frequency.

Table 4 provides estimates of total annual cost burden to respondents or recordkeepers resulting from the collection of information.

TABLE 4

Data collection activity/ instrument	* Annual capital start-up cost (investments in overhead, equipment and other one-time expenditures)	* Annual operations and maintenance cost (such as recordkeeping, technical/professional services, etc.)	Annual non-labor cost (expenditures on training, travel and other resources)	Total annual cost to respondents
Development of New Local and Tribal Plans	$12,289,200			$12,289,200
Local and Tribal Plan Updates		$16,299,360	$2,716,560	19,015,920
State Review of Local and Tribal Plans				0
Standard State Mitigation Plan Updates		1,217,700	202,950	1,420,650
Enhanced State Mitigation Plan Updates		691,680	115,280	806,960
Total	12,289,200	18,208,740	3,034,790	33,532,730

Overall Estimated Total Cost: $43,839,232.

The overall estimated cost of this collection is $43,839,232 ($10,306,502 + $33,532,730). This is an increase of $10,386,580 ($33,452,652—$43,839,232) from the currently approved OMB inventory.

E. National Environmental Policy Act (NEPA) of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts in their decision-making on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 *et seq.,* require Federal agencies to prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that typically do not trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process the agency will determine whether to make a Finding of No Significant Impact or whether to initiate the EIS process.

Rulemaking is a major federal action subject to NEPA. The *List of exclusion categories* at 44 CFR 10.8(d)(2)(ii) excludes the preparation, revision, and adoption of regulations from the preparation of an EA or EIS, where the rule relates to actions that qualify for categorical exclusions. The development of plans under 44 CFR part 201 is categorically excluded under 44 CFR 10.8(d)(2)(iii) and (xviii)(E). No extraordinary circumstances exist that will trigger the need to develop an EA or EIS. See 44 CFR 10.8(d)(3). An EA will not be prepared because a categorical exclusion applies to this rulemaking action and no extraordinary circumstances exist.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

This Final Rule revises FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates from 3 to 5 years. Tribal Mitigation Plan updates are already required every 5 years; however, in accordance with 44 CFR 201.3(e)(3), Indian Tribal governments are potentially eligible to act as grantee and qualify for increased HMGP funding by submitting an Enhanced Mitigation Plan. Indian Tribal governments that wish to submit an Enhanced Mitigation Plan are required to update that plan every 3 years; the Final Rule will reduce that frequency to every 5 years. For these reasons, this rule may have ''tribal implications'' as defined in the Executive Order. Submission of the plan, however, is voluntary, and changing the frequency of the plan from 3 to 5 years will not impose direct compliance costs on Indian Tribal governments. Therefore, FEMA finds that this Final Rule complies with Executive Order 13175.

G. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government, or the agency consults with State and local officials. FEMA has analyzed this Final Rule under the Executive Order and determined that it does not have implications for federalism.

This Final Rule revises FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates, extending the update requirement from 3 to 5 years. FEMA has received substantial input requesting that FEMA change its Mitigation Planning regulations to

reduce the frequency of Standard State and Enhanced State Mitigation Plan updates. Some of those requests have come from State officials.

The Standard State and Enhanced State Mitigation Plan updates are voluntarily submitted by States. Per DMA 2000, Mitigation Plans are a condition of receipt of increased Federal funding for hazard mitigation measures. If a State chooses not to comply with the regulations in 44 CFR part 201, it still will be eligible for limited emergency assistance under the Stafford Act. (See 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, and 5192).

H. Executive Order 12630, Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights'' (53 FR 8859, Mar. 18, 1988).

I. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level.

This rule relates to the implementation of section 322 of the Stafford Act (42 U.S.C. 5165). Section 322 focuses specifically on mitigation planning to identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and Tribal areas; development of Local Mitigation Plans; technical assistance to local and Tribal governments for mitigation planning; and identifying and prioritizing mitigation actions that the State will support as resources become available. The reduction in burden from the update frequency may allow States to focus on implementing additional mitigation actions identified through the planning process as a means to increase resilience and reduce the Nation's risk to natural hazards; thereby also protecting human lives and the environment. No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

J. Executive Order 12988, Civil Justice Reform

This Final Rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden in the federal court system.

K. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This Final Rule will not create environmental health risks or safety risks for children under Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997).

L. Executive Order 11988, Floodplain Management

FEMA has prepared and reviewed this rule under the provisions of Executive Order 11988, as amended, ''Floodplain Management'' (42 FR 26951, May 25, 1977). The regulations at 44 CFR part 9 set forth FEMA's policy, procedures, and responsibilities in implementing this Executive Order. In summary, these are, to the greatest possible degree: to avoid long and short term adverse impacts associated with the occupancy and modification of floodplains; avoid direct and indirect support of floodplain development whenever there is a practical alternative; reduce the risk of flood loss; promote the use of nonstructural flood protection methods to reduce the risk of flood loss; minimize the impacts of floods on human health, safety and welfare; restore and preserve the natural and beneficial values served by floodplains; and adhere to the objectives of the Unified National Program for Floodplain Management.

As stated in the preamble, the planning process provides a link between State, Tribal and local mitigation programs. Both State level and local plans should address strategies for incorporating post-disaster early mitigation implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference comprehensive plans, land use plans, master plans, and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as expediting implementation of measures and activities to reduce those risks, both pre- and post-disaster. This Final Rule revises FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years. The change aligns the State update requirements with local and Tribal Mitigation Plan update requirements, which does not conflict with the intent of the Executive Order.

M. Congressional Review Act

FEMA has sent this Final Rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (''Congressional Review Act''), Public Law 104–121, 110 Stat. 873 (Mar. 29, 1996) (5 U.S.C. 804). This rule is not a ''major rule'' within the meaning of the Congressional Review Act.

List of Subjects in 44 CFR Part 201

Administrative practice and procedure, Disaster assistance, Grant programs, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, amend part 201 of title 44 of the Code of Federal Regulations as follows:

PART 201—MITIGATION PLANNING

■ 1. The authority citation for part 201 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. In § 201.3, revise paragraphs (b)(5), (c)(2), and (c)(3), and the second sentence of paragraph (e)(3) to read as follows:

§ 201.3 Responsibilities.

* * * * *

(b) * * *

(5) Conduct reviews, at least once every 5 years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) * * *

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every 5 years from the date of the approval of the previous plan.

(3) At a minimum, review and update the Standard State Mitigation Plan every 5 years from the date of the approval of the previous plan in order to continue program eligibility.

* * * * *

(e) * * *

(3) * * * The plan must be reviewed and updated at least every 5 years from the date of approval of the previous plan.

■ 3. In § 201.4, revise the first sentence of paragraph (d) to read as follows:

§ 201.4 Standard State Mitigation Plans.

* * * * *

(d) * * * Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Administrator every 5 years. * * *

■ 4. In § 201.5, revise the third sentence of paragraph (a), revise the first sentence of paragraph (c)(1), and revise (c)(2) to read as follows:

§ 201.5 Enhanced State Mitigation Plans.

(a) * * * In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within 5 years prior to the disaster declaration.

* * * * *

(c) * * *

(1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Administrator every 5 years. * * *

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 5 years prior to the current major disaster declaration.

Dated: April 17, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09461 Filed 4–24–14; 8:45 am]

BILLING CODE 9111–66–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004518–3398–01]

RIN 0648–XD033

Reef Fish Fishery of the Gulf of Mexico; 2014 Recreational Accountability Measure and Closure for Gray Triggerfish in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for recreational gray triggerfish in the Gulf of Mexico (Gulf) reef fish fishery for the 2014 fishing year through this temporary final rule. Based on the 2013 recreational annual catch limit (ACL) overage, NMFS reduces the 2014 recreational annual catch target (ACT) and ACL for gray triggerfish to 0 lb (0 kg) through this temporary rule. Therefore, NMFS closes the recreational sector for gray triggerfish in the Gulf EEZ at 12:01 a.m., local time, May 1, 2014, until January 1, 2015. This action is necessary to reduce overfishing of the Gulf gray triggerfish resource.

DATES: This rule is effective 12:01 a.m., local time, on May 1, 2014, until 12:01 a.m., local time, on January 1, 2015, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf, which includes gray triggerfish, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All weights specified in this rule are round weight.

The final rule for Amendment 37 to the FMP (78 FR 27084, May 9, 2013) implemented the Gulf gray triggerfish recreational ACL of 241,200 lb (109,406 kg), and the recreational ACT of 217,100 lb (98,475 kg), as specified in 50 CFR 622.41(b)(2)(iii).

The final rule for Amendment 37 to the FMP implemented an in-season AM to close the recreational sector when its ACT is reached or projected to be reached, as specified in 50 CFR 622.41(b)(2)(i), and implemented a post-season AM in the form of an overage adjustment that would apply if the recreational ACL is exceeded and gray triggerfish are overfished, as specified in 50 CFR 622.41(b)(2)(ii). This post-season AM reduces the recreational ACL and ACT for the year following a recreational ACL overage by the amount of the ACL overage in the prior fishing year, unless the best scientific information available determines that a greater, lesser, or no overage adjustment is necessary.

NMFS determined that the 2013 recreational landings were 524,606 lb (237,957 kg), which exceeded the 2013 recreational ACT by 307,506 lb (139,482 kg) and the 2013 recreational ACL by 283,406 lb (128,551 kg). Therefore, NMFS implements a post-season AM for recreational gray triggerfish in the Gulf for the 2014 fishing year through this temporary final rule. Based on the 2013 overage of 283,406 lb (128,551 kg), NMFS reduces the 2014 recreational ACT from 217,100 lb (98,475 kg), to 0 lb (0 kg) and the 2014 recreational ACL from 241,200 lb (109,406 kg) to 0 lb (0 kg).

Based on the adjusted 2014 recreational ACT of 0 lb (0 kg), for Gulf gray triggerfish, NMFS implements the in-season AM to close the recreational harvest of Gulf gray triggerfish at 12:01 a.m., local time, on May 1, 2014, until 12:01 a.m., local time on January 1, 2015, unless changed by subsequent notification in the **Federal Register**.

During the closure, the bag and possession limit of gray triggerfish in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters. The recreational sector for gray triggerfish will reopen on January 1, 2015, the beginning of the 2015 recreational fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf gray triggerfish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(b)(2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule because such procedures are unnecessary and is contrary to the public interest. Prior notice and the opportunity to comment is unnecessary because the final rule for Amendment 37 to the FMP (78 FR 27084, May 9, 2013) implemented AMs which state that NMFS will file a notification with the Office of the Federal Register to reduce the recreational ACT and the recreational ACL by the amount of any recreational ACL overage in the prior year and to close the recreational sector for Gulf gray triggerfish for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACT. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the reduced recreational fishing season for gray triggerfish.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the gray triggerfish resource. Any delay in the closure of the recreational sector could result in the adjusted recreational ACL for gray triggerfish being further exceeded, which, in turn, would further reduce the recreational ACL and ACT for gray triggerfish in 2015.

For the aforementioned reasons, the Assistant Administrator, NMFS, also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2014.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09402 Filed 4–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD260

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2014 Greenland turbot initial total allowable catch (ITAC) in the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2014, through 2400 hrs, A.l.t., December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2014 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI is 395 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014). In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the 2014 Greenland turbot ITAC in the Aleutian Islands subarea of the BSAI will be needed as incidental catch to support other groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside the remaining 395 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Aleutian Islands subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Greenland turbot in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 21, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2014.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09429 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD261

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2014 Greenland turbot initial total allowable catch (ITAC) in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2014, through 2400 hrs, A.l.t., December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2014 Greenland turbot ITAC in the Bering Sea subarea of the BSAI is 1,410 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014). In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the 2014 Greenland turbot ITAC in the Bering Sea subarea of the BSAI will be needed as incidental catch to support other groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt, and is setting aside the remaining 1,410 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Greenland turbot in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 21, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2014.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09430 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 80
Friday, April 25, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. # AMS–NOP–14–0012; NOP–14–03]

National Organic Program: Notice of Draft Guidance on Substances Used in Post-Harvest Handling of Organic Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of draft guidance with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the availability of a draft guidance document intended for use by accredited certifying agents and certified operations and exempt operations that produce or handle certified organic products. The guidance document is entitled: Substances Used in Post-Harvest Handling of Organic Products (NOP 5023). This guidance document is intended to inform the public of the National Organic Program's (NOP) current thinking on this topic. The NOP is seeking comments on this draft guidance document.

DATES: To ensure that NOP considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written comments on the draft guidance by June 24, 2014.

ADDRESSES: Submit written requests for hard copies of this draft guidance document to Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250–0268. See the **SUPPLEMENTARY INFORMATION** section regarding electronic access to the draft guidance document.

Interested persons may submit comments on these draft guidance documents using the following procedures:

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

• *Mail:* Comments may be submitted by mail to: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646 So., Ag Stop 0268, Washington, DC 20250–0268.

Written comments responding to this request should be identified with the document number AMS–NOP–14–0012; NOP–14–03. You should clearly indicate your position and the reasons for your position. If you are suggesting changes to the draft guidance document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on *www.regulations.gov* and at USDA, AMS, NOP, Room 2646–South building, 1400 Independence Ave. SW., Washington DC, from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250, Email: *Melissa.bailey@ams.usda.gov;* Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

There is a section within the USDA organic regulations called the National List of Allowed and Prohibited Substances (National List) (7 CFR sections 205.600 through 205.607). This National List identifies the synthetic substances that are allowed and the nonsynthetic (natural) substances that are prohibited in organic production. Nonsynthetic (natural) substances are generally permitted to be used in organic production, unless they appear as prohibited nonsynthetics on the National List. The National List also identifies nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6522), and USDA organic regulations (7 CFR section 205.105), specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List.

This draft guidance describes the National Organic Program's (NOP) current thinking on the allowance of substances used in post-harvest handling activities such as washing, packing, and storage of organic products. There is no discrete section of the National List designated for substances used in these post-harvest handling activities; instead, the substances allowed for use in post-harvest handling appear in different sections of the National List (e.g., section 205.601 for crop production; section 205.605 for processing), or are nonsynthetic substances, and are therefore not included on the National List. This has led to confusion about the point at which crop production for unprocessed commodities ends, when processing starts, and which substances may be used for post-harvest activities that may occur on farm or in a processing facility.

This draft guidance provides information to all USDA-accredited certifying agents (certifiers) and certified and exempt organic operations on substances that may be used in post-harvest handling of organic products. It clarifies: (1) What substances may be used; (2) the difference between post-harvest handling of raw agricultural crops and further processing; and (3) the provisions for facility pest management. This draft guidance also defines post-harvest substances. This draft guidance, once finalized, would clarify which substances may be used in post–harvest handling on organic farms and in processing facilities.

The NOP selected the topic for the draft guidance document announced through this notice in response to questions received from certifiers and organic operations. These stakeholders requested that the NOP clarify the

requirements and limitations regarding the substances permitted in post-harvest handling. The NOP also discussed and received feedback on this topic at a training session for certifiers in Portland, Oregon, in February 2011.

The draft guidance is available from NOP on its Web site at *http://www.ams.usda.gov/nop.* Once finalized, final guidance would be available in ''The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations''. This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at *http://www.ams.usda.gov/nop.*

II. Significance of Guidance

This draft guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440).

The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. This draft guidance represents NOP's current thinking on the topic. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501–6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, NOP strongly encourages industry to discuss alternative approaches with NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

III. Electronic Access

Persons with access to Internet may obtain the draft guidance at either NOP's Web site at *http://www.ams.usda.gov/nop* or *http://www.regulations.gov*. Requests for hard copies of the draft guidance documents can be obtained by submitting a written request to the person listed in the **ADDRESSES** section of this Notice.

Authority: 7 U.S.C. 6501–6522.

Dated: April 21, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–09390 Filed 4–24–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. APHIS–2009–0047]

Fee Increases for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to change the hourly rates charged for Sundays, holidays, or other overtime work performed by employees of the Animal and Plant Health Inspection Service (APHIS) for any person, firm, or corporation having ownership, custody, or control of regulated commodities or articles subject to inspection, laboratory testing, certification, or quarantine under the regulations. We are proposing to increase these overtime rates for each of the fiscal years 2014 through 2018 to reflect the anticipated costs associated with providing these services during each year. Establishing the overtime rate changes in advance would allow users of APHIS' services to incorporate the rates into their budget planning. We are also proposing to clarify the regulations to indicate that agricultural inspections performed by the Department of Homeland Security (DHS) may be billed in accordance with DHS overtime regulations for services performed outside of regular business hours, as DHS rates may differ from those charged by APHIS.

DATES: We will consider all comments that we receive on or before June 24, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2009–0047, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information concerning Plant Protection and Quarantine program operations, contact Mr. William E. Thomas, AQI Coordinator, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737–1231; (301) 851–2306.

For information concerning Veterinary Services program operations, contact Ms. Carol Tuszynski, Director, Planning, Finance, and Strategy Staff, Program Support Services, VS, APHIS, 4700 River Road Unit 58, Riverdale, MD 20737–1231; (301) 851–3463.

For information concerning APHIS user fee development, contact Ms. Kris Caraher, Branch Chief, Review and Analysis, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737; (301) 851–2834.

For information concerning DHS overtime fees, contact Mrs. Kara Welty, Chief, Debt Management Branch, Indianapolis, CBP, DHS, 6650 Telecom Drive Suite 100, Indianapolis, IN 46278–2010; (317) 614–4614.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, which are explained below, when these services must be provided by an Animal and Plant Health Inspection Service (APHIS) employee on a Sunday or on a holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

APHIS has not adjusted the overtime rates for inspection, laboratory testing, certification, or quarantine services since we published a final rule in the

Federal Register on July 25, 2002 (67 FR 48519–48525, Docket No. 00–087–2) that was effective on August 11, 2002. That rule increased overtime rates proportionate to, and as a result of, changes to the costs associated with providing inspection, laboratory testing, certification, and quarantine services outside of an employee's normal tour of duty and allowed for yearly increases to the rates charged. The last of these annual increases went into effect on October 1, 2005. That final rule increased overtime rates so that APHIS could recover the costs of providing overtime services.

Based on continuing changes to the costs associated with providing inspection, laboratory testing, certification, and quarantine services, as well as annual salary increases for Federal employees, the current overtime rates must be adjusted in order for APHIS to properly recover the full cost of providing these services. Therefore, we are proposing to establish the hourly overtime rates for fiscal years (FYs) 2014 through 2018; the FY 2014 rates would become effective on the date specified in a final rule following this proposed rule, the FY 2015 through FY 2018 rates would become effective on the first day of each of the fiscal years, and the FY 2018 rates would remain in effect until new rates were established. The overtime rate tables in this document, therefore, do not specify an end date for overtime rates that would become effective on October 1, 2017 (the beginning of FY 2018). Establishing the overtime rate changes in advance would allow users of APHIS' services to incorporate the rates into their budget planning. We plan to publish a notice in the **Federal Register** prior to the beginning of each fiscal year to remind and notify the public of the overtime rates charged for inspection, laboratory testing, certification, and quarantine services for that particular fiscal year.

The proposed rule would amend the regulations by:

1. Establishing hourly overtime rates for each of the fiscal years 2014 through 2018 that are charged to the person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, poultry, animal byproducts, germ plasm, organisms, vectors, or other regulated commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine, who needs the services of an APHIS employee on a Sunday or holiday, or at any other time outside the employee's regular tour of duty; and

2. Establishing hourly overtime rates for each of the fiscal years 2014 through 2018 that are charged to an owner or operator of an aircraft for inspection or quarantine services provided by an APHIS employee at an airport outside of the regularly established hours of service.

The overtime rates proposed in this document are based on our review and cost analysis of the current fees, which indicated that increases are needed to ensure that the fees charged are adequate for APHIS to cover the cost of providing these overtime services. The cost analysis is based on our review of data such as anticipated costs due to increases in salaries and benefits of Federal employees, indirect costs, program management costs, billing and collection service costs, Agency overhead costs, and departmental charges.

Overtime Rate Components

We calculated our overtime rates to cover the full cost of providing inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the normal tour of duty of the employee providing these services. The cost of providing these services includes direct and indirect costs. The direct costs are an employee's salary and specific benefits, which are APHIS' payment of the hospital insurance tax and its contribution to the Federal Insurance Contribution Act (FICA), and the Agency's costs for work performed at night. The indirect costs are area delivery costs, billing and collection costs, program direction and support costs, central/departmental charges, and unfunded leave costs.

To calculate the proposed overtime rates, we identified and projected the direct costs in each of FYs 2014 through 2018 for each of the following four overtime rate categories:

1. Inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, or weekdays;

2. Inspection, laboratory testing, certification, or quarantine of animals and animal or agricultural products or articles performed by an APHIS employee outside of his or her normal tour of duty on Sundays;

3. Commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, or weekdays; and

4. Commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Sundays.

We then identified and added the appropriate indirect costs to the direct costs to obtain the ''raw'' hourly overtime rates. For each of the four overtime rate categories, we then rounded these raw rates up to the nearest whole dollar to arrive at the final hourly overtime rates. The following tables list the direct and indirect cost components for each of the four overtime rate categories.

TABLE 1—PROPOSED OVERTIME RATES FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS AND ANIMAL OR AGRICULTURAL PRODUCTS OR ARTICLES PERFORMED BY AN APHIS EMPLOYEE OUTSIDE OF HIS OR HER NORMAL TOUR OF DUTY ON SATURDAYS, HOLIDAYS, OR WEEKDAYS

Cost components	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Direct cost components:					
Employee's salary	$39.80	$40.00	$40.20	$40.40	$40.60
Night differential	0.10	0.10	0.10	0.10	0.10
Hospital insurance tax	0.57	0.57	0.57	0.58	0.58
FICA	1.87	1.88	1.89	1.90	1.91
Indirect cost components:					
Area delivery	7.19	7.22	7.26	7.30	7.33
Billing and collection	1.61	1.62	1.63	1.64	1.65
Agency level program delivery	5.20	5.23	5.25	5.28	5.30
Agency level administrative support	3.06	3.07	3.09	3.10	3.12
Central/department charges	1.93	1.94	1.95	1.96	1.97

TABLE 1—PROPOSED OVERTIME RATES FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS AND ANIMAL OR AGRICULTURAL PRODUCTS OR ARTICLES PERFORMED BY AN APHIS EMPLOYEE OUTSIDE OF HIS OR HER NORMAL TOUR OF DUTY ON SATURDAYS, HOLIDAYS, OR WEEKDAYS—Continued

Cost components	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Imputed Costs	12.17	12.23	12.30	12.36	12.42
Hourly "raw" rate	73.49	73.86	74.23	74.60	74.97
Hourly rate rounded	74.00	74.00	75.00	75.00	75.00
Quarter hour rate	18.50	18.50	18.75	18.75	18.75

TABLE 2—PROPOSED OVERTIME RATES FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS AND ANIMAL OR AGRICULTURAL PRODUCTS OR ARTICLES PERFORMED BY AN APHIS EMPLOYEE OUTSIDE OF HIS OR HER NORMAL TOUR OF DUTY ON SUNDAYS

Cost components	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Direct cost components:					
Employee's salary	$53.06	$53.33	$53.60	$53.86	$54.13
Night differential	0.13	0.13	0.13	0.13	0.13
Hospital insurance tax	0.76	0.76	0.76	0.77	0.77
FICA	2.49	2.50	2.52	2.53	2.54
Indirect cost components:					
Area delivery	9.58	9.63	9.68	9.73	9.78
Billing and collection	1.61	1.62	1.63	1.64	1.65
Agency level program delivery	6.88	6.91	6.95	6.98	7.02
Agency level administrative support	4.04	4.06	4.09	4.11	4.13
Central/department charges	2.55	2.57	2.58	2.59	2.60
Imputed Costs	16.23	16.31	16.39	16.48	16.56
Hourly "raw" rate	97.34	97.83	98.32	98.81	99.30
Hourly rate rounded	98.00	98.00	99.00	99.00	100.00
Quarter hour rate	24.50	24.50	24.75	24.75	25.00

TABLE 3—PROPOSED OVERTIME RATES FOR COMMERCIAL AIRLINE INSPECTION SERVICES PERFORMED BY AN APHIS EMPLOYEE OUTSIDE OF HIS OR HER NORMAL TOUR OF DUTY ON SATURDAYS, HOLIDAYS, OR WEEKDAYS

Cost components	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Direct cost components:					
Employee's salary	$39.80	$40.00	$40.20	$40.40	$40.60
Night differential	0.10	0.10	0.10	0.10	0.10
Hospital insurance tax	0.57	0.57	0.57	0.58	0.58
FICA	1.87	1.88	1.89	1.90	1.91
Indirect cost components:					
Area delivery	7.19	7.22	7.26	7.30	7.33
Billing and collection	1.61	1.62	1.63	1.64	1.65
Imputed Costs	12.17	12.23	12.30	12.36	12.42
Hourly "raw" rate	63.30	63.62	63.94	64.26	64.58
Hourly rate rounded	64.00	64.00	64.00	65.00	65.00
Quarter hour rate	16.00	16.00	16.00	16.25	16.25

TABLE 4—PROPOSED OVERTIME RATES FOR COMMERCIAL AIRLINE INSPECTION SERVICES PERFORMED BY AN APHIS EMPLOYEE OUTSIDE OF HIS OR HER NORMAL TOUR OF DUTY ON SUNDAYS

Cost components	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Direct cost components:					
Employee's salary	$53.06	$53.33	$53.60	$53.86	$54.13
Night differential	0.13	0.13	0.13	0.13	0.13
Hospital insurance tax	0.76	0.76	0.76	0.77	0.77
FICA	2.49	2.50	2.52	2.53	2.54
Indirect cost components:					
Area delivery	9.58	9.63	9.68	9.73	9.78
Billing and collection	1.61	1.62	1.63	1.64	1.65
Imputed costs	16.23	16.31	16.39	16.48	16.56

TABLE 4—PROPOSED OVERTIME RATES FOR COMMERCIAL AIRLINE INSPECTION SERVICES PERFORMED BY AN APHIS EMPLOYEE OUTSIDE OF HIS OR HER NORMAL TOUR OF DUTY ON SUNDAYS—Continued

Cost components	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Hourly "raw" rate	83.87	84.29	84.71	85.13	85.56
Hourly rate rounded	84.00	85.00	85.00	86.00	86.00
Quarter hour rate	21.00	21.25	21.25	21.50	21.50

Direct Cost Components

Employee's Salary. The employee's salary covers APHIS' direct labor costs for the pay an employee earns when he or she provides inspection, laboratory testing, certification, or quarantine services outside of his or her normal tour of duty. We used the estimated weighted average salary of General Schedule (GS)–10 step 1 at all locations that provided these services during FY 2014 to obtain a weighted average salary of $55,371 per year. The salary of a GS–10 step 1 is the maximum amount at which overtime is paid to an employee for performing these services.

We divided the average salary of $55,371 by 2,087 employee hours per year to obtain the average employee's salary amount of $26.53 per hour during normal tour of duty hours.

An APHIS employee is paid 1.5 times the normal employee's salary for services performed outside of his or her normal tour of duty on Saturdays, holidays, or weekdays, and is paid twice the normal employee's salary for those services performed on Sundays. Therefore, we multiplied the average employee's salary of $26.53 per hour by 1.5 to obtain the FY 2014 employee's salary of $39.80 per hour for work performed outside an employee's normal tour of duty on Saturdays, holidays, and weekdays. We also multiplied the average employee's hourly salary of $26.53 by two to obtain the FY 2014 employee's salary of $53.06 per hour for those services performed outside of an employee's normal tour of duty on Sundays.

Night Differential. The night differential covers the Agency's costs for overtime work performed by an APHIS employee at night. This consists of the pay earned by an employee above the basic rate for regularly scheduled work performed at night between 6 p.m. and 6 a.m., and includes an employee's base pay, compensatory time, Sunday double time, and ''over 40'' overtime pay for overtime work performed at night.

To obtain the night differential portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the night differential costs during FY 2014. The estimated night differential costs of $13,629 are 0.24 percent of the total average employee salary costs of $5,582,990. This percentage was then applied to the employee's salary for each overtime rate category. For example, the night differential costs of $0.10 per hour for FY 2014 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the FY 2014 employee's salary of $39.80 per hour for the same overtime rate category multiplied by 0.24 percent.

Personnel Benefits. Personnel benefits are limited to those additional benefits that accrue to an APHIS employee as a result of the employee performing services specifically during overtime periods. These benefits are the hospital insurance tax and the FICA contributions made by the Agency.

The hospital insurance tax and the FICA contributions cover APHIS' costs for the U.S. Social Security System's Medicare Insurance and the U.S. Social Security System's Old Age, Survivor, Death Insurance, respectively. The hospital insurance tax is used to help pay for an employee's hospital services during retirement. The Agency's FICA contributions help pay for an employee's insurance when he or she is eligible (usually at age 62), insurance for surviving spouses and/or children of deceased employees, and a part of the Social Security System's contribution to disability payments in certain cases.

Because the personnel benefits portion of the overtime rates cost is limited to the hospital insurance tax and the FICA contributions made by the Agency, a full-blown benefits percentage was not applied in the same manner that a benefits percentage would be applied if those services were provided during an employee's normal tour of duty. To obtain the costs of the hospital insurance portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the hospital insurance tax costs in FY 2014. The estimated hospital insurance tax costs of $79,583 are 1.43 percent of the estimated employee salary costs of $5,582,991. This percentage was then applied to the employee's salary for each overtime rate category. For example, the hospital insurance tax amount of $0.57 per hour for FY 2014 for work performed by an employee on Saturdays, holidays, or weekdays outside of his or her normal tour of duty equals the FY 2014 employee's salary of $39.80 per hour for the same overtime rate category multiplied by 1.43 percent.

Similarly, to obtain the FICA portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the FICA costs during FY 2014. Estimated FICA costs of $263,579 are 4.69 percent of the estimated total employee salary costs of $5,582,991 in FY 2014. This percentage was then applied to the employee's salary for each overtime rate category. For example, the FICA amount of $1.87 per hour for FY 2014 for work performed on Saturdays, holidays, or weekdays by an employee outside of his or her normal tour of duty equals the FY 2014 employee's salary of $39.80 per hour multiplied by 4.69 percent.

Indirect Cost Components

Area Delivery. Area delivery covers APHIS' costs for local clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the services but that is nonetheless necessary); travel and transportation for personnel; supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contract services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; and utilities. Utilities include water, telephone, electricity, gas, heating, and oil. These costs are accumulated in a distributable account and an appropriate amount is charged to the overtime rates account throughout the year.

To obtain the area delivery costs portion of the overtime rates, we estimated the percentage of total employee salary costs attributable to the area delivery costs in FY 2014. The estimated area delivery costs of $1,008,258 are 18.06 percent of the

estimated employee salary costs of $5,582,991 in FY 2014. This percentage was then applied to the employee's salary for each overtime rate category. For example, the area delivery amount of $7.19 per hour for FY 2014 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the estimated FY 2014 salary of $39.80 per hour for the same overtime rate category multiplied by 18.06 percent.

Billings and Collections. The billings and collections portion of the overtime rates covers APHIS' costs for physically billing and collecting for services covered by the overtime rates. Billing costs are the costs of managing user fee accounts for our customers. Collections expenses include the costs of managing customer payments and accurately reflecting those payments in our accounting system.

To calculate the billings and collections portion of the overtime rates, we estimated our billings and collections costs for FY 2014 through FY 2018 by identifying the specific employees who provide billing and collection services and estimating the percentage of time each of those employees will spend on user fee billings and collections for inspection, laboratory testing, or quarantine services performed by an APHIS employee on a Sunday, holiday, or any other time outside of the employee's normal tour of duty. We then added related billings and collections costs, such as credit bureau costs, mailing costs, materials, printing costs, and the cost of our accounting system.

Imputed Costs. Imputed costs include Office of Worker's Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; headquarters space operation and maintenance costs; Office of Personnel Management and State Department costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs. Collections for the part of the fee for imputed costs is not retained in the reimbursable overtime account but is forwarded to the U.S. Treasury in accordance with the Office of Management and Budget (OMB) Circular A–25, User Charges,[1] Government Accountability Office guidance, and U.S. Department of Agriculture (USDA) Departmental Regulations.

To calculate the imputed costs portion of the overtime rates, we estimated the reimbursable overtime's portion of the FY 2014 APHIS imputed costs. The estimated imputed costs of $1,707,714 are 30.59 percent of the estimated employee salary costs of $5,582,991. This percentage was then applied to the employee's salary for each overtime rate category. For example, the imputed costs amount of $12.17 per hour for FY 2014 for work performed on a holiday, Saturday, or weekday outside of an employee's normal tour of duty equals the estimated FY 2014 salary of $39.80 per hour for the same overtime rate category multiplied by 30.59 percent.

Agency Level Program Delivery. Agency level program delivery costs are management support costs the APHIS programs incur at APHIS' headquarters and includes the costs of management support staffs; planning, finance and strategy work; program directors' offices; and program regional offices. We used the APHIS standard overhead rate of 10.17 percent to calculate this cost component for the appropriate reimbursable overtime rates.

Agency Level Administrative Support. Agency level administrative support includes the pro-rata share of the costs of certain Agency activities, including budget and accounting services, regulatory and legal services, Administrator's office costs, personnel services, public information services, and liaison with Congress. We used the APHIS standard agency support costs rate of 5.98 percent to calculate this cost component for the appropriate reimbursable overtime rates.

Central/Departmental Charges. This component includes APHIS' share, expressed as a percentage of the total cost, of services provided centrally by the USDA. Services that the USDA provides centrally include the Federal Telephone Service, mail, National Finance Center processing of payroll and other money management, unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and USDA forms. The USDA notifies APHIS how much the Agency owes for these services. We have included a pro-rata share of these USDA charges that is attributable to overtime services of 3.25 percent for the calculation of the appropriate reimbursable overtime rates.

Costs for Agency level program delivery, agency level administrative support, and central/departmental charges are not included in our calculations for commercial airline inspection services performed by an APHIS employee outside of his or her normal tour of duty on Saturdays, holidays, weekdays, or Sundays. Those inspections are administered under the Airport and Airway Development Act of 1970, which limits the rate to be charged after normal tour of duty hours to only the cost actually incurred in performing the inspection, and includes the cost of employee salary, benefits, night differential, hospital insurance tax, FICA, area delivery, billing and collection, and unfunded leave costs only.

As is the case with all APHIS user fees, we intend to review, at least annually, the activities, programs, and fee assumptions for the user fees proposed in this document. We will publish any necessary adjustments in the **Federal Register**.

Hourly Overtime Rates

The regulations in 7 CFR 354.1(a)(1) and 9 CFR 97.1(a) contain the hourly overtime rates charged to any person, firm, or corporation having ownership, custody, or control of animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities subject to inspection, laboratory testing, certification, or quarantine under the regulations. We are proposing to amend 7 CFR 354.1(a)(1) and 9 CFR 97.1(a) to reflect the hourly overtime rates that would be charged for fiscal years 2014 through 2018. The table below shows the current and proposed hourly overtime rates.

[1] OMB Circular A–25, User Charges is available on the Internet at *http://www.whitehouse.gov/omb/circulars_a025.*

TABLE 5—CURRENT AND PROPOSED OVERTIME RATES

[Per Hour]

	Outside employee's normal tour of duty	Fiscal year					
		Current rate	[Effective date of final rule] Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Inspection, testing, certification, or quarantine of animals and animal or agricultural products.	Monday–Saturday and holidays.	$51	$74	$74	$75	$75	$75
	Sundays	67	98	98	99	99	100
Commercial airline inspection services.	Monday–Saturday and holidays.	41	64	64	64	65	65
	Sundays	55	84	85	85	86	86

These changes to the hourly overtime rates are the only substantive changes this proposed rule would make to the regulations in 7 CFR 354.1(a)(1) and 9 CFR 97.1(a) regarding overtime rates. Other provisions of the overtime rates for inspection, laboratory testing, certification, and quarantine services performed outside of an employee's normal tour of duty would continue to apply if these proposed overtime rates were made effective.

In addition to those overtime fees described above, APHIS also charges user fees for certain other services. The regulations in 7 CFR part 354 and 9 CFR part 130 set out user fees for other inspection and quarantine services provided by APHIS for the import and export of plants, plant products, animals, animal byproducts, or other regulated commodities or articles. The user fees would not be affected by the overtime rate changes proposed in this rule. However, users who request import- or export-related services that are covered by flat rate user fees on a Sunday, holiday, or any time outside of an employee's normal tour of duty, and who are subject to the overtime rates set forth in 7 CFR 354.1 or 9 CFR 97.1, would be charged the hourly overtime rate changes proposed in this rule, in addition to the flat rate user fees. The overtime rates charged to users who request flat rate user fee services are set out in the table in 9 CFR 130.50(b)(3)(i). We would, therefore, amend the table in § 130.50(b)(3)(i) to reflect the overtime rates in proposed 7 CFR 354.1 and 9 CFR 97.1.

Department of Homeland Security Inspection Overtime Fees

We are also proposing to include language in 7 CFR 354.1, 9 CFR 97.1, and 9 CFR 130.50 to clarify that any agricultural inspection performed by an employee of the Department of Homeland Security (DHS) Bureau of Customs and Border Protection on a Sunday, holiday, or anytime outside of the employee's normal tour of duty may be billed in accordance with the regulations in 5 CFR part 551, 7 CFR 354.1, 9 CFR 97.1, 9 CFR 130.50, or 19 CFR 24.16. This action is necessary because the costs associated with such DHS inspections may differ from those incurred by APHIS, therefore, varying overtime charges may apply in such circumstances in order for DHS to properly recover costs and adequately fund program operations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We have prepared an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

APHIS charges hourly overtime rates to individuals, firms, and corporations requesting inspection, testing, certification, or quarantine services at laboratories, border ports, ocean ports, rail ports, quarantine facilities, and airports outside of the regularly established hours of service. These overtime rates are charged to the individuals, firms, or corporations requesting the services, and the fees vary depending on the type of service performed and when the service is provided. This proposed rule would amend the user fees for reimbursable overtime user fees to reflect increases in costs associated with providing these services.

APHIS is updating these fees to take into account the routine increases in the cost of conducting business during overtime hours. The cost to the import/export program to provide these services has increased year to year, and these proposed increases are necessary to more accurately provide the full cost recovery of this Agency activity.

Currently, APHIS charges $51 per hour per employee for work other than inspection of a commercial aircraft outside the employee's regular tour of duty, and $67 per hour per employee for work other than inspection of a commercial aircraft that is performed on Sundays outside the employee's regular tour of duty. APHIS charges $55 per hour per employee for inspection of a commercial aircraft performed outside of the employee's normal tour of duty on a Sunday, and $41 per hour per employee for inspection of a

commercial aircraft performed outside of the regularly established hours of service on a holiday or any other period. This proposed rule change would establish hourly overtime rates for each of the fiscal years 2014 through 2018. These rates would increase over a 5-year period by $24 for regular work other than inspection of a commercial aircraft, by $33 for Sunday work other than inspection of a commercial aircraft, by $24 for regular inspection of a commercial aircraft, and by $31 for Sunday inspection of a commercial aircraft.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule; and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 7 CFR part 354 and 9 CFR parts 97 and 130 as follows:

Title 7

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.1 is amended as follows:

■ a. By revising paragraph (a)(1) introductory text, including the table.

■ b. In paragraph (a)(1)(i), by removing the words ''the Customs Service, Immigration and Naturalization Service'' and adding the words ''U.S. Customs and Border Protection'' in their place.

■ c. By revising the table in paragraph (a)(1)(iii).

■ d. In paragraph (a)(2), by removing the word ''A'' in the first sentence and adding the words ''Except as provided in paragraph (a)(3) of this section, a'' in its place.

■ e. By adding paragraph (a)(3).

■ f. In paragraphs (a)(2), (b), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(4), and (f), by adding the words ''or U.S. Customs and Border Protection'' after the words ''Animal and Plant Health Inspection Service'' each time they appear.

The addition and revisions read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and subchapter D of chapter I, title 9 CFR, who requires the services of an employee of the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1)(i), (ii), and (iii), and (a)(3) of this section:

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANT, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	$74	$74	$75	$75	$75
Sundays	98	98	99	99	100

* * * * * (iii) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	$64	$64	$64	$65	$65

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]—Continued

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Sundays	84	85	85	86	86

[1] These charges exclude administrative overhead costs.

* * * * *

(3) The overtime rate and all other charges, including minimum and commute compensation charges, to be billed for services provided by an employee of U.S. Customs and Border Protection shall be established and charged according to the provisions of this section, 5 CFR part 551, or 19 CFR 24.16.

* * * * *

Title 9

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 97.1 is amended as follows:

■ a. By revising paragraph (a) introductory text, including the table.

■ b. In paragraph (a)(1), by removing the words ''the Customs Service, Immigration and Naturalization Service'' and adding the words ''U.S. Customs and Border Protection'' in their place.

■ c. By revising the table in paragraph (a)(3).

■ d. By adding paragraph (a)(4).

■ e. In paragraphs (a) introductory text, (b), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(4), and (f), by adding the words ''or U.S. Customs and Border Protection'' after the words ''Animal and Plant Health Inspection Service'' each time they appear.

The addition and revisions read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]

(a) Any person, firm, or corporation having ownership, custody, or control of animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the Animal and Plant Health Inspection Service or U.S. Customs and Border Protection inspector in charge to furnish the service and shall pay the Government at the rate listed in the following table, except as provided in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section:

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANT, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	$74	$74	$75	$75	$75
Sundays	98	98	99	99	100

* * * * *

(3) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)				
	[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Monday through Saturday and holidays	$64	$64	$64	$65	$65
Sundays	84	85	85	86	86

[1] These charges exclude administrative overhead costs.

* * * * *

(4) The overtime rate and all other charges, including minimum and commute compensation charges, to be billed for services provided by an employee of U.S. Customs and Border Protection shall be established and charged according to the provisions of

[1] For designated ports of entry for certain animals, animal semen, poultry, and hatching eggs, see §§ 93.102, 93.203, 93.303, 93.403, 93.503, 93.703, and 93.805 of this chapter. For designated ports of entry for certain purebred animals see §§ 151.1 through 151.3 of this chapter.

this section, 5 CFR part 551, or 19 CFR 24.16.

* * * * *

PART 130—USER FEES

■ 5. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 6. Section 130.50 is amended as follows:

■ a. In paragraph (b)(3) introductory text, by removing the words ''or (ii)'' and adding the words '', (ii), or (iii)'' in their place.

■ b. By revising the table in paragraph (b)(3)(i).

■ c. By adding paragraph (b)(3)(iii).

The addition and revision read as follows:

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

OVERTIME FOR FLAT RATE USER FEES [1] [2]

	Outside of the employee's normal tour of duty	Overtime rates (per hour)				
		[Effective date of final rule]–Sept. 30, 2014	Oct. 1, 2014–Sept. 30, 2015	Oct. 1, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities.[3]	Monday–Saturday and holidays.	$74	$74	$75	$75	$75
	Sundays	98	98	99	99	100
Rate for commercial airline inspection services.[4]	Monday–Saturday and holidays.	64	64	64	65	65
	Sundays	84	85	85	86	86

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

[3] See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

[4] See § 97.1(a)(3) of this chapter for details.

* * * * *

(iii) For information on rules pertaining to the charges associated with employees of U.S. Customs and Border Protection performing agricultural inspection services, please see 7 CFR 354.1 and 9 CFR 97.1.

* * * * *

Done in Washington, DC, this 21st day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–09463 Filed 4–24–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS–2013–0021]

RIN 0579–AD77

User Fees for Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the user fee regulations by adding new fee categories and adjusting current fees charged for certain agricultural quarantine and inspection services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers arriving at ports in the customs territory of the United States. We are also proposing to adjust or remove the fee caps associated with commercial trucks, commercial vessels, and commercial railcars. We have determined that revised user fee categories and revised user fees are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

DATES: We will consider all comments that we receive on or before June 24, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0021, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. William E. Thomas, Senior Agriculturist, Office of the Deputy Administrator, PPQ, APHIS, 4700 River Road Unit 130, Riverdale, MD 20737 1231; (301) 851–2306. For information concerning rate development, contact Mr. Michael Peranio, Chief, User Fees, Financial Services Branch, FMD, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737; (301) 851–2852.

SUPPLEMENTARY INFORMATION:

Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (21 U.S.C. 136a) authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for certain agricultural quarantine and inspection (AQI) services. The FACT Act was amended on April 4, 1996, and May 13, 2002.

The FACT Act, as amended, authorizes APHIS to collect user fees for

AQI services provided in connection with the arrival, at a port in the customs territory of the United States, of commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers. According to the FACT Act, as amended, these user fees should recover the costs of:

- Providing the AQI services for the conveyances and the passengers listed above;
- Providing preclearance or preinspection at a site outside the customs territory of the United States to international passengers, commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft;
- Administering the user fee program; and
- Maintaining a reasonable reserve.

In addition, the FACT Act, as amended, contains the following requirements:

- The fees should be commensurate with the costs with respect to the class of persons or entities paying the fees. This is intended to avoid cross-subsidization of AQI services.
- The cost of AQI services with respect to passengers as a class should include the cost of related inspections of the aircraft or other vehicle.

APHIS' regulations regarding overtime services and user fees relating to imports and exports are found in 7 CFR part 354. The user fees for the AQI activities described above are contained in § 354.3, ''User fees for certain international services.''

In an interim rule published in **Federal Register** on December 9, 2004 (69 FR 71660–71683, Docket No. 04–042–1), and effective on January 1, 2005, we amended the user fee regulations in § 354.3 by adjusting the fees charged for certain AQI services provided by APHIS and the Customs and Border Protection (CBP) bureau of the Department of Homeland Security in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The AQI user fees contained in that interim rule covered fiscal years (FY) 2005 through 2010. A final rule affirming the interim rule without change was published in the **Federal Register** on August 24, 2006 (71 FR 49984–49986, Docket No. 04–042–2). Those fees are still in effect today. We published an interim rule to increase AQI fees 10 percent across the board on September 28, 2009 (74 FR 49311–49315, Docket No. APHIS–2009–0048), but withdrew that interim rule before it became effective in order to explore other regulatory alternatives.

Introduction

The AQI fees have not been adjusted since FY 2010 and do not reflect the current cost of providing AQI services. In addition, the AQI fee reserve account has decreased because fees collected have not been sufficient to cover current costs, in part due to the recent economic recession. As a result, CBP has relied more heavily on its appropriated funds to supplement fee revenue.

APHIS recently conducted a comprehensive fee review to determine the current cost of specific AQI services supported by these fees. That review determined that the AQI program was not recovering the full cost of its fee services, including costs of administering the user fee program and maintaining a reasonable reserve in the fee accounts. Some of this non-recovery is because most of the current fees do not accurately reflect the current full cost of the services related to those fees. However, some of this non-recovery is also due to prior APHIS policy decisions to:

- Cap fees collected for commercial trucks (with transponders), commercial vessels, and commercial railroad cars;
- Exempt certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers as authorized in AQI regulations;
- Exempt international passengers arriving as rail passengers, bus passengers, in privately owned vehicles (POV), private aircraft, and private vessels; and
- Exempt individuals arriving as pedestrians.

The fee caps refer to current AQI user fee regulations that limit the number of times a specific truck (with transponder), vessel, or railroad car must pay the AQI fee in a given year. As part of the AQI fee review, we reviewed the financial and workload implications of those caps. We also considered the financial, workload, and policy implications of creating new fees for international passengers arriving by cruise ship, bus, private vehicle, private aircraft, and private vessel, and for pedestrians. We also considered the financial, workload, and policy implications of establishing fees for commodity (plant and plant product) import permits, pest import permits, and conducting and monitoring treatments.

Based on the findings of the AQI user fee review, we are proposing to amend the AQI user fee regulations to reflect the projected cost of providing AQI services, including expected changes in cost and workload for the period the revised fees will be in effect. Specifically, we are proposing to:

- Adjust the fees charged for the following conveyances or persons to whom AQI services are provided: Commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers. However, because commercial truck inspections have separate fees for trucks with and without decals (transponders), we are actually proposing to adjust a total of six current fees.
- Add a new fee to be charged for international commercial sea (cruise vessel) passengers, who were previously funded through fees collected for commercial vessels. The FACT Act gives APHIS authority to charge a fee for all international passengers.
- Add a new fee for conducting and monitoring treatments, which is a significant cost that should be paid by those who use and benefit from these services.
- Remove the caps for vessels and railcars.
- Adjust the caps on fees for trucks with transponders.

These proposed adjustments are designed to recover the full cost of providing these AQI services, commensurate with the class of persons or entities paying the fees, and are based on an analysis of our costs for providing services in FY 2010 and FY 2011, as well as our best projections of what it will cost to provide these services in FYs 2013 through 2016. The proposed adjustments will also allow us to maintain the AQI reserve account. These user fee adjustments are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

AQI services are provided by a combination of APHIS and CBP personnel. Because of this arrangement, the AQI user fees collected will be shared with CBP based on the related respective costs for each agency.

AQI User Fee Accounting

We maintain all AQI user fees that we collect in a distinct account. We carefully monitor the balance in this account and use these funds to pay for our actual costs for providing these distinct AQI services. Any surpluses in the various AQI accounts carry forward from year to year. The AQI user fees are not subject to appropriation by Congress, although actual collections

and estimates of future collections are expressed in each year's President's Budget. Collected funds are available until expended to fund appropriate AQI activities.

AQI Program Costs

For AQI user fee purposes, we are required to capture the full cost of the AQI services that we provide. This is required by:

- The FACT Act;
- Office of Management and Budget (OMB) Circular A–25, User Charges;
- Statement of Federal Financial Accounting Standards #4 (SFFAS #4), Managerial Cost Accounting Standards and Concepts;
- OMB Circular A–11, Preparation, Submission, and Execution of the Budget; and
- The Chief Financial Officers (CFO) Act.

Full cost includes programmatic costs and overhead costs as well as imputed costs, which are costs (such as certain current benefits costs and future retirement costs and other post-employment benefits) paid by agencies other than APHIS and CBP. OMB Circular A–25 and SFFAS #4 require the inclusion of imputed costs when determining the full cost of an output, such as an AQI service, so that the full cost to the Federal Government is recovered. Full cost also includes depreciation costs related to facilities and equipment used in delivering AQI services.

APHIS Costs

AQI program costs incurred by APHIS include:

- Direct charge costs;
- Program delivery related costs (known as distributable costs) at the State level and below, at the regional and headquarters levels, the APHIS agency level, and the U.S. Department of Agriculture (USDA) departmental level (these costs are described in greater detail below); and
- Depreciation and other imputed costs.

As part of our accounting procedures, we maintain separate accounting codes to record costs that can be directly charged to an AQI activity. APHIS functions that are directly charged to AQI accounts include salary and benefits and other costs (e.g., travel, supplies, rents, and equipment) for various personnel, including:

- Personnel in plant inspection stations inspecting propagative materials (e.g., seeds and bulbs) and conducting and monitoring treatments;
- Personnel performing pest identification services (insects, pathogens, plants);
- Personnel performing investigative, enforcement, and smuggling interdiction and trade compliance activities;
- Personnel performing risk analysis, science and technology, policy development, training, and methods development activities relating to AQI work; and
- Personnel performing training of CBP Agricultural Specialists, CBP Officers, and CBP Agriculture Specialist Canine Officers.

Other program delivery related costs that cannot be directly charged to individual AQI accounts are charged to distributable accounts established at the State, regional, headquarters, agency, and departmental levels. These costs are driven to the AQI activities using staffing level (full time equivalents or FTE) counts as the cost driver. This then provides for a ''fully loaded'' activity cost. The activity costs are then driven to program outputs (such as inspections) based upon work counts.

Distributable accounts typically contain the following types of costs: Salaries and benefits, utilities, rent, telephone, vehicles, office supplies, etc. The costs in these distributable accounts are distributed within the APHIS accounting system to all the programs and activities that benefit from the expense. This is based on a formula under which the costs that are directly charged to each activity are divided by the total costs directly charged to each account. For example, if a work unit performs work on both domestic programs and AQI user fee programs, the distributable account costs are allocated to each of these programs based on the percentage of the costs directly charged to that activity.

Headquarters-level costs include costs for employees of APHIS' Plant Protection and Quarantine (PPQ) and International Services (IS) programs who are based at those programs' headquarters in Riverdale, MD, and Washington, DC. We incur agency-level support costs through activities that support APHIS, such as recruitment and development; legislative and public affairs; regulation development; regulatory enforcement; and budget, accounting, payroll, purchasing, billing, and collection services. Departmental charges are assessed for various AQI program costs including Federal telephone service, mail, processing of payroll and money management, unemployment compensation, Office of Workers Compensation Programs, and central supply for storing and issuing commonly used supplies and forms. Because the agency and department level costs are costs for all of APHIS, we assign a proportional amount to the AQI program, primarily based on the staffing level used in the AQI program.

Imputed costs include Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; headquarters space operation and maintenance costs; Office of Personnel Management (OPM) and State Department costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs. Fee revenue collected that is based on imputed costs is not retained in the AQI account but is forwarded to the U.S. Treasury.

CBP Costs

CBP program costs are similar to those for APHIS. CBP costs that are directly charged to AQI activities include salaries and benefits for CBP Agriculture Specialists, CBP Officers, CBP Agriculture Specialist Canine Officers, supervisors (such as port directors), CBP Technicians, and mission support staff; equipment and supplies used in connection with services subject to AQI user fees; contracts used for AQI services; and large supply items such as uniforms, laboratory and examination equipment, and non-intrusive inspection equipment used for AQI services.

CBP activities that are directly charged to AQI accounts include various personnel at ports of entry, headquarters, and field offices, including:

- Personnel deployed to international airports and seaports to perform regulatory enforcement activities that include:
- Processing for entry of passengers, baggage, and personal effects;
- Examination for entry of aircraft, containers, and vessels;
- Administration of wood packaging material and regulated garbage compliance monitoring activities; and
- Examination for entry of commercial cargo and parcels.
- Personnel deployed to land border ports of entry to perform regulatory enforcement activities including examination for entry of commercial trucks, railcars, containers, and commercial cargo and parcels.
- Personnel conducting pre-arrival analysis, targeting, and selection for examination of baggage, commodities, conveyances, packages, etc., that present a risk to American agriculture and natural resources; including agricultural and biological terrorism agents.

• Personnel providing expert guidance, training, and technical advice to CBP Officers, other CBP personnel, trade, industry, and other stakeholders on regulatory requirements pertaining to compliance with agricultural regulations and the processing of agriculture-related cargo and material.

• Personnel performing pre- and post-academy training for CBP Agriculture Specialists, CBP Officers, other CBP personnel, and the performance of recruitment and agriculture-related outreach.

Summary level costs for APHIS and CBP are shown in table 1 below.

TABLE 1—FY 2011 ESTIMATED COSTS BY CATEGORY AND AGENCY

Cost category	APHIS	CBP	Total
Direct	$140,210,651	$418,647,765	$558,858,416
Overhead	12,220,530	223,776,057	235,996,587
Imputed	12,572,451	53,764,878	66,337,329
Total	165,003,632	696,188,700	861,192,332

AQI Cost Analysis

In order to determine the current cost of AQI services and understand the potential impact of alternative fee schedules, we first calculated the costs of the current AQI program by fee category, using the activity-based-costing (ABC) methodology. We were then able to project volumes and perform detailed cost analysis for potential changes to the AQI fee schedule. This cost modeling effort included developing historical cost information using FY 2010 and FY 2011 financial and workload data to provide the full cost of AQI activities and outputs. We used the ABC methodology because it supports the philosophy of full cost recovery, provides the functional elements and data for cost and business process analysis, and complies with regulatory guidance regarding full cost recovery.

ABC uses a two-step methodology to assign an organization's costs to its work activities and then to its related outputs. Costs are those things on which an organization spends its budget, such as salaries and benefits for employees, rent, equipment, etc. Work activities are the various endeavors that people in the organization undertake (e.g., air passenger inspection, pest identification), and outputs are the goods or services that the organization produces through its activities.

In the first step of ABC, we assigned costs to activities using resource drivers, which typically represent a cause-and-effect relationship to establish how much of a resource is consumed by each activity. For example, if an organization spends 10 percent of its effort performing a particular activity, we assigned 10 percent of certain costs (e.g., salary and benefits) to that activity because the level of effort is a good indicator of resources consumed. In support of this step, we conducted an activity labor survey for APHIS State, regional, and headquarters organizations to estimate the level of effort devoted to AQI activities. We also incorporated activity cost information for CBP from their existing cost model.

In the second step, we assigned APHIS and CBP activity costs to the outputs produced by performing the activities. We performed this cost assignment using activity drivers, again based on a cause-and-effect relationship. For example, if an activity is performed for more than one type of output, we assigned the cost of the activity to the outputs proportionately based on the workload data (volume) associated with each output. We used workload data from several APHIS and CBP systems as the activity drivers.

While our AQI cost model design is based on the standard ABC methodology, it also incorporated several additional cost assignment layers to provide more transparent cost assignment and reporting. This included identifying and costing outputs at levels that were more detailed than necessary to capture costs just at current fee service levels. For example, we separately determined the cost of APHIS and CBP outputs and then combined this information to develop cost information for overall AQI services. This then provided us with flexibility for restructuring the AQI fee schedule. We also calculated expected future costs and workload and added those to the base to estimate the total costs and workload for the future periods when the new fees are expected to be in effect.

The data for the AQI cost analysis came from financial and program workload information in standard APHIS and CBP records. The financial data included direct program costs and overhead costs previously discussed. This data was previously captured by those agencies to comply with other requirements. CBP already had a detailed cost model for its activities, and we used cost data from the CBP cost model. As noted above, we used a detailed labor survey to determine the cost of APHIS activities.

Then, in accordance with Office of Management and Budget Circular, A–25 ''User Charges,'' and OMB Statement of Federal Financial Accounting Standards, Number 30, ''Managerial Cost Accounting Standards and Concepts,'' we identified and added an appropriate amount of imputed costs. These are costs borne by other Federal agencies (such as the U.S. Treasury and the Office of Personnel Management) in support of the AQI program. We used employee costs as the basis to identify the portion of these costs to attribute to the AQI program.

We calculated APHIS depreciation by identifying equipment-related depreciation expenses. For APHIS-owned buildings where AQI work is performed, we used an appropriate portion (based on percent of work done in the building that was AQI) of the total depreciation for those buildings. CBP provided depreciation data for CBP-owned facilities and capital equipment based on similar calculations.

When the AQI cost model was completed, we were able to determine the actual costs of each of the current AQI services, as shown in the table below. By matching these costs with the workload volumes for each AQI fee service, we were also able to calculate the unit cost of each output. We were also able to determine the more detailed costs associated with all classes of passengers and treatments. Table 2 shows the FY 2011 baseline costs by service activity that resulted from this AQI cost analysis.

TABLE 2—AQI FY 2011 BASELINE COSTS

Fee service activity	2011 Actual cost
Air Passenger	$291,434,620
Cruise Ship Passenger	20,205,868
Rail Passenger	1,630,302
Bus Passenger	23,091,799

TABLE 2—AQI FY 2011 BASELINE COSTS—Continued

Fee service activity	2011 Actual cost
POV Passenger	129,489,305
Pedestrian	34,664,442
Commercial Aircraft	156,242,180
Commercial Maritime Cargo Vessel	91,152,480
Commercial Truck	73,529,394
Commercial Cargo Railcar	5,150,585
Private Aircraft	11,371,965
Private Maritime Vessel	4,940,099
Treatments	14,324,472
Military Clearance Operations	3,964,821
Total	861,192,332

To project costs beyond FY 2011, we considered two changes to these baseline costs. The first change was any initiative which would increase APHIS or CBP costs in those years. Both APHIS and CBP have implemented various initiatives aimed at reducing redundancy in data input requirements for importers, increasing transparency, reducing wait times or expediting inspections, and eliminating or changing treatment requirements. The APHIS initiatives are:

- A Web-based permit system that allows users to submit permit applications, track applications, apply for renewals and amendments, and receive copies of their import/interstate movement/transit/release permits.
- AQI outreach, an effort to provide information and education to travelers and importers in order to reduce the risk of bringing prohibited agricultural items into the United States.
- Critical upgrades to plant inspection station equipment that will enable us to do plant inspections more effectively.
- A more robust risk assessment capacity that will enable APHIS to increase its capacity to perform risk assessments through increasing the quality and reliability of its data.
- Development of new treatment techniques by APHIS scientists that can be used on agricultural products coming into the United States. These methods can save cost and time as well as reduce the risk of invasive pests entering the country.

The CBP initiatives are:

- Border security supplemental, which is related to a FY 2010 law intended to bolster border security, specifically along the U.S./Mexican border, and represents the AQI cost associated with the law. The initiative funding supports Federal agents, judges, courts, and other various agencies.
- Increase in the journeyman grade for CBP Officers, CBP Agriculture Specialists, and Border Patrol Agents to account for increasing scope of responsibilities of officers and agents and to bring parity across Federal agencies. The AQI fee review incorporated journeyman upgrade costs specifically related to AQI.
- National Targeting Center that filters advanced information on people and products to identify threats and risks and allows CBP to target higher risk trade and travelers for detailed inspection prior to their arrival at a U.S. port of entry.
- Address increased activity at ports of entry by hiring additional personnel.

The data for these initiatives came from APHIS and CBP budget offices and is shown in Table 3.

TABLE 3—APHIS AND CBP INITIATIVES

Future initiatives	2012	2013	2014	2015	2016
APHIS					
Web-based permits system	$1,200,000	$1,204,680	$1,226,364	$1,237,279	$1,248,291
AQI outreach	5,000,000	5,019,500	5,109,851	5,155,329	5,201,211
Plant inspection station equipment	23,600	23,692	24,118	24,333	24,550
Risk assessment capacity	120,000	120,468	122,636	123,728	124,829
Treatment development	180,000	180,702	183,955	185,592	187,244
CBP					
Border security supplemental	5,676,640	5,676,640	5,773,143	5,802,009	5,831,019
Journeyman increase	38,550,379	38,550,379	39,205,735	39,401,764	39,598,773
National Targeting Center	6,895,000	6,919,133	7,042,985	7,102,850	7,163,225
Port of entry staff expansion	7,752,437	7,752,437	7,884,228	7,923,649	7,963,267
Totals	65,398,056	65,447,630	66,573,016	66,956,533	67,342,408

The second change that we considered in calculating future costs was projected cost growth. Table 4 shows the growth rates used to project future cost increases. These growth rates represent guidance provided by OMB for use in developing budgets and other forecasts of future costs. They are broken out by payroll and non-payroll costs, and we applied them accordingly to the baseline costs and initiatives.

TABLE 4—GROWTH RATES

Fiscal year	Payroll (percent)	Non-payroll (percent)
2012	0.0	1.3
2013	0.0	1.6
2014	1.7	2.1
2015	0.5	2.1
2016	0.5	2.1

Based on these growth rates, we projected the costs shown in Table 5 for FYs 2014 through 2016.

TABLE 5—PROJECTED COSTS FYS 2014 THROUGH 2016

Fee service activity	2014	2015	2016
Air passenger	$322,591,452	$324,996,118	$327,426,378

TABLE 5—PROJECTED COSTS FYS 2014 THROUGH 2016—Continued

Fee service activity	2014	2015	2016
Sea passenger	22,421,487	22,589,194	22,758,727
Rail passenger	1,805,242	1,818,103	1,831,085
Bus passenger	25,573,198	25,758,827	25,946,311
POV passenger	143,333,256	144,384,916	145,447,319
Pedestrian	38,357,661	38,635,543	38,916,167
Commercial aircraft	170,836,038	172,855,461	174,912,526
Commercial maritime	99,783,440	100,995,859	102,232,305
Commercial truck	81,018,003	81,789,820	82,573,152
Commercial cargo railcar	5,679,995	5,732,572	5,785,904
Private aircraft	12,602,768	12,690,860	12,779,754
Private maritime vessel	5,486,025	5,526,987	5,568,398
Treatments	15,086,074	15,421,466	15,765,008
Military clearance	4,331,642	4,371,639	4,412,236
Total	948,906,281	957,567,365	966,355,270

Volume Projections

To develop potential fee scenarios, we also projected workload growth and resulting workload volumes for each fiscal year from 2013 to 2016. We were able to identify FY 2011 and 2012 actual workload from data previously captured by APHIS and CBP. To forecast expected changes in imports and tourist traffic across the nation's borders, we researched a variety of data sources and used the following:

- We used projections from the International Air Transport Association Industry Forecast Summary Report to project air passengers and air cargo.
- We used projections from a market research site, Cruise Market Watch, to project sea passengers.
- We used a U.S. Department of Transportation report that forecast the number of border crossings by mode of traffic at selected ports of entry and extrapolated to get projections for pedestrians and POV and bus passengers.
- We used a USDA report on Agricultural Sector Aggregate Indicators to project maritime cargo, truck cargo, rail cargo, mail packages, commodity import permits, and treatments.
- We did not forecast any changes for rail passengers, private aircraft, or private sea vessels because a change rate for these conveyances cannot be tied to any import data or other independent variable.

Table 6 shows the resulting volumes for the various fee service activities.

TABLE 6—WORKLOAD PROJECTIONS, FYS 2013 THROUGH 2016

Fee	2011 Actual count	2012 Actual count	Expected changes (annual)	2013	2014	2015	2016
Air passenger	78,901,506	77,255,476	3.60%	80,036,673	82,917,993	85,903,041	88,995,551
Sea passenger	12,931,271	13,532,465	3.15	13,958,738	14,398,438	14,851,989	15,319,826
Rail passenger	276,722	276,855	—	276,855	276,855	276,855	276,855
Bus passenger	5,222,786	5,318,382	−1.69	5,228,501	5,140,140	5,053,271	4,967,871
POV passenger	169,834,015	175,428,545	0.76	176,761,802	178,105,192	179,458,791	180,822,678
Pedestrian	40,609,235	41,375,736	−3.49	39,931,723	38,538,106	37,193,126	35,895,086
Commercial aircraft	700,644	719,251	3.60	745,144	771,969	799,760	828,551
Commercial maritime cargo vessel	101,794	113,727	3.15	117,309	121,005	124,816	128,748
Commercial truck	10,348,791	10,664,770	3.83	11,073,231	11,497,335	11,937,683	12,394,897
Commercial cargo railcar	2,912,210	3,230,167	3.83	3,353,882	3,482,336	3,615,710	3,754,191
Private aircraft	121,221	116,240	—	116,240	116,240	116,240	116,240
Private maritime vessel	80,529	80,949	—	80,949	80,949	80,949	80,949
Treatments	29,713	38,517	5.36	40,582	42,757	45,048	47,463

Fee Computation

With the total costs and the workload projections, we were able to project fee requirements for each potential fee service activity. However, in addition to the fee revenue required to cover current and projected AQI service costs, we need to generate revenue to replenish the AQI account reserve. The reserve components were established simply by rounding up the raw fee calculations (projected unit cost) for each fee. All projected unit costs less than $10 were rounded up to the next $1, and all unit costs greater than $200 were rounded up to the next $25. No proposed fees fall between $10 and $200. This approach provides a proportionate rounding for all fees. We then calculated the estimated number of days that the reserve could support costs on a noncumulative basis. We estimate that by the end of FY 2016 the AQI reserve will have approximately a 90 day reserve, which is consistent with our established AQI fund reserve policy.

Proposed Fee Amounts

APHIS is proposing significant changes to the AQI user fee structure and the fee rates. As previously mentioned, we employed activity based costing (ABC) as our methodology to determine the cost of AQI services, and this information, along with other factors, was used to define an appropriate fee structure and fee rates. The ABC methodology is a derivative of the managerial cost accounting, which is recommended by OMB and

Government Accountability Office guidance on government fee setting. Previously, APHIS relied on an estimation methodology to determine the fee rates, and we believe that the estimation methodology did not provide enough information to properly establish the correct fee structure and fee rates. We also believe that the use of the ABC methodology provides significantly greater accuracy and transparency in fee setting. The use of ABC has enabled APHIS to more accurately identify the true costs of providing each of the AQI services.

The costs incurred by both APHIS and CBP have been analyzed using the ABC methodology. APHIS was able to determine activity costs for each AQI service by collecting related financial and workload data for APHIS and CBP, and using this information to properly assign AQI program costs to each activity. The AQI program costs include program delivery activities such as inspections, inspection targeting analysis, staff training, plant and pest identification, and risk assessments. The majority of activity costs are for salary and benefits, but they also include costs such as the training of CBP Agriculture Specialists, CBP Officers, training and care of CBP Agriculture Specialist Canine Officers and canines, replacement or new equipment, utilities, rent, replacement or new vehicles, and office supplies; and imputed costs that APHIS and CBP are responsible for recovering such as workman's compensation, health, retirement, and life insurance benefits.

Using the data and methodology discussed above, we calculated the proposed fees shown in table 7. Each fee service activity is explained in greater detail in the paragraphs that follow. If these proposed fees become effective, we would continue to monitor the costs of AQI services, our collections, and the level of the reserve and would undertake rulemaking to adjust the fees if we determined that costs were not being appropriately recovered or the reserve levels were on a path to be either greater or less than our established AQI fund 90-day reserve policy.

TABLE 7—PROPOSED FEES

Fee service activity	Current	Proposed
Air passenger	$5	$4
Commercial aircraft	70.75	225
Commercial maritime cargo vessel	496	825
Commercial truck	5.25	8
Commercial truck transponder	105	320
Commercial cargo railcar	7.75	2
Sea passenger	no fee	2
Treatments	no fee	375

Air passenger. Millions of travelers pass through U.S. airports daily. Inspecting air passengers includes pre-arrival analysis of incoming passengers and screening arriving air passengers for agricultural products by CBP Agriculture Specialists and CBP Officers; inspection of passenger baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspecting the interior of the passenger aircraft; monitoring the storage and removal of regulated international garbage from the aircraft to ensure consistency with all regulatory requirements; safeguarding and appropriately disposing of any seized or abandoned prohibited agricultural products; and identifying pests found on prohibited agricultural products brought into the country by air passengers. The ABC data indicated that the current fee was going to generate revenues in excess of what will be required to support anticipated costs. As a result, we are proposing a 20 percent decrease in this fee (from $5 to $4) to better align the fee with the cost of activities related to air passengers.

Commercial aircraft. We also inspect international commercial aircraft arriving at airports in the customs territory of the United States. Inspecting commercial aircraft includes reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection or clearance; inspecting various types of agricultural and agricultural-related commodities, international mail, expedited courier packages, containers, compliant wood packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the aircraft hold or exterior for contaminants, pests, or invasive species; monitoring the storage and removal of regulated international garbage from the aircraft to ensure consistency with all regulatory requirements; identifying pests found during inspection; and safeguarding shipments pending PPQ determination for treatment or final disposition. The ABC data indicated that the current fee being charged does not reflect the actual costs incurred in the performance of those activities and would result in a significant shortfall in what will be required to cover the anticipated costs of this activity. Accordingly, we are proposing a 218 percent increase in this fee (from $70.75 to $225) to more accurately align the fee with the actual cost of activities related to commercial aircraft inspection described above as those costs were identified using our ABC methodology.

Commercial maritime cargo vessel. We inspect commercial vessels of 100 net tons or more arriving at ports of entry into the customs territory of the United States. Inspecting commercial maritime cargo vessels involves reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection or clearance; inspecting various types of agricultural and agricultural-related commodities, containers, compliant wood packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the vessel to ensure that contaminants, pests, or invasive pests are not present or are properly safeguarded; inspecting the ship's stores to ensure that prohibited items are not present; monitoring the storage and removal of regulated international garbage from the vessel to ensure consistency with all regulatory requirements; identifying pests found during inspection; and safeguarding shipments pending PPQ determination for treatment or final disposition. The current regulations cap the number of arrivals for which a single vessel would be charged at 15 per calendar year, i.e., a vessel is not charged for its 16th or subsequent arrival in any 1 year. The ABC data

indicated that the limitation on collections imposed by the cap, as well as the amount of the current fee, was going to lead to a shortfall in what will be required to support anticipated costs. As a result, we are proposing to remove the 15-arrival cap and increase the fee by 71 percent (from $496 to $825) to align the fee with the cost of activities related to commercial maritime cargo vessels.

Commercial truck. We inspect commercial trucks arriving at land ports in the customs territory of the United States from Mexico and Canada. Inspecting trucks involves reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection; inspecting various types of agricultural and agricultural-related commodities, compliant wood packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the truck and conveyance for contaminants, pests, or invasive species; identifying pests found during inspection; and safeguarding shipments pending final determination for treatment or final disposition. The ABC data indicated that the current fee was going to result in a shortfall in what will be required to support anticipated costs. As a result, we are proposing a 52 percent increase in this fee (from $5.25 to $8) to align the fee with the cost of activities related to commercial trucks.

Commercial truck transponder. We estimate that the use of transponders corresponds to a 10 minute reduction in the border crossing time for trucks. The proposed fee will maintain an incentive for trucks to continue the use of transponders while recovering a greater portion of the Government's cost to provide inspection services. Based on data about how many times a commercial truck with a responder came into the country, we propose to increase the truck transponder fee from 20 to 40 times the individual truck fee. We are proposing this change based on our analysis indicating that trucks with transponders cross an average of 106 times per year. Increasing the truck transponder fee to 40 times the individual truck fee, along with the increase in the commercial truck fee, results in an increase of 205 percent (from $105 to $320) for the transponder fee.

Commercial cargo railcar. We inspect loaded commercial railroad cars arriving at land ports in the customs territory of the United States from Mexico and Canada. Inspecting railcars involves reviewing manifests and documentation accompanying incoming cargo; targeting higher risk cargo for inspection or clearance; inspecting various types of agricultural and agricultural-related commodities, containers, compliant wood packaging material, and packing materials to screen for the presence of plant pests and contaminants, compliance with regulations, and determining entry status; inspecting the railcars for contaminants, pests or invasive species; identifying pests found during inspection; monitoring the storage and removal of regulated international garbage from the railcar to ensure consistency with all regulatory requirements; and safeguarding shipments pending PPQ determination for treatment or final disposition. The ABC data indicated that the current fee was going to generate revenues significantly in excess of what will be required to support anticipated costs. Accordingly, we are proposing a 74 percent decrease in this fee (from $7.75 to $2) to align the fee with the cost of activities related to commercial cargo railcars.

We also analyzed those fee service activities for which there was not currently a fee even though significant workload and/or costs were being generated:

Sea passenger. Inspecting a cruise vessel and its passengers includes pre-arrival analysis of incoming passengers; screening arriving sea passengers for agricultural products by CBP Agriculture Specialists and CBP Officers; inspection of passenger baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspection of the vessel itself to ensure that contaminants, prohibited articles, or invasive pests are not present; inspecting the ship's stores to ensure that prohibited items are not present or are properly safeguarded; and monitoring the storage and removal of regulated international garbage from the vessel to ensure consistency with all existing regulatory requirements. (Consistent with our AQI fee authority, the costs of inspecting the cruise ships themselves would be covered by the proposed sea passenger fee rather than a separate fee similar to the commercial maritime cargo vessel fee, just as the international air passenger user fee covers the costs associated with inspecting the aircraft on which they arrived.) We also analyze information that allows us to perform targeted inspections in order to reduce the risk of a dangerous plant, plant pest, contaminant, or foreign animal disease from entering the United States. This information is used in our training and in the development of inspection guidance and policies. Similar information is used extensively by CBP to help distinguish levels of risk. We believe that this effort helps us to provide the highest level of protection at the lowest cost. No fees are currently collected for this category of passenger. Based on the costs associated with inspecting these passengers (projected at approximately $22.4 million to $22.8 million in FYs 2014 to 2016, as noted in table 5 above) and the ease of collection from the direct beneficiary (i.e., the passenger) through the sea vessel ticket, we are proposing to implement a $2 user fee, which is sufficient to recover the projected costs of this AQI activity. This new fee would allow us to recover the costs associated with this inspection activity.

The new sea passenger user fee would be added to paragraph (f) of § 354.3, which currently contains the provisions regarding the airline passenger AQI user fee, as the collection and remittance procedures for both the sea passenger and airline passenger user fees would be the same. The current regulations provide an exemption from the payment of user fees for the crew members on duty on an arriving aircraft; we would make the same exemption for crew members on duty aboard an arriving cruise ship. Similarly, the current regulations provide that airlines will not be charged reimbursable overtime for passenger inspection services required for any aircraft on which a passenger arrived who has paid the international passenger AQI user fee for that flight. We would provide the same limitation on overtime charges for cruise lines.

Treatments. Treatments are performed on some agricultural goods as a condition of entry, and others are performed when an actionable pest (i.e., a plant pest that should not be allowed to be introduced into or disseminated within the United States) is detected during a port-of-entry inspection. The objective of these AQI treatments is to ensure that agricultural goods and commodities entering the United States are free from viable plant pests and noxious weeds that would pose a risk to the health of the U.S. domestic agriculture and natural resources. Treatment methods include fumigation, cold treatment, irradiation, and heat treatment. APHIS activities related to the application of AQI treatments include personnel determining the appropriate treatment schedule, monitoring the treatment to ensure it is conducted as specified so that the treatment takes place in the prescribed manner, and determining whether the treatment was successful. These AQI services focus on ensuring the

effectiveness of a given treatment regardless of its methodology. While AQI treatments are usually provided by private entities who charge the importer for their services, from time to time APHIS will provide the treatment, especially for propagative materials. We also develop new methods of treatments. These methods increase the effectiveness of treating agricultural goods and reduce the risk of dangerous pests entering the United States. No fees are currently collected for this activity.

Based on our analysis of the costs (projected at approximately $15 million to $15.8 million in FYs 2014 to 2016, as noted in table 5 above) and the relative ease of collection when the treatment is ordered, we are proposing a $375 fee for each treatment. The AQI treatment fee is designed to recover the costs of APHIS services for monitoring the treatment to ensure it is conducted as specified so that the treatment takes place in the prescribed manner and determining whether the treatment was successful. Should a treatment prove unsuccessful and have to be reapplied, that subsequent AQI treatment would also be subject to an AQI treatment fee, as APHIS incurs costs by providing AQI treatment-related services regardless of the success or failure of the treatment. Similarly, if there was a particularly large consignment that had to be treated in two or more lots, each lot would be subject to an AQI treatment fee. Finally, along those lines, if there were two or more small consignments from different importers that required the same treatment and could be combined and treated together at the same time, there would be only one AQI treatment fee charged, with each importer being responsible for a share of that fee.

The provisions for the payment of AQI user fees for conducting and monitoring treatments would be added to § 354.3 as a new paragraph (h). Most treatment services are provided by private companies that charge importers a fee for their services. Because those companies are already invoicing the importers whose consignments are being treated, we are proposing that the treatment companies would also collect the AQI user fee and subsequently remit the fee to APHIS. This is the same model used for the collection of the AQI user fees for international airline passengers and that we are proposing to use for cruise ship passengers. In those instances where APHIS itself performs the treatment, we would collect the fee directly from the importer for whom the treatment is being provided.

Other Fees Considered

APHIS considered, but is not proposing at this time, fees for the following AQI services:

- Rail passenger: No fees are currently collected for this category of passenger. Because the total cost is less than $2 million, and there would be additional cost of creating and operating fee collections, we are not proposing any fees for this category of passenger.
- Bus passenger: No fees are currently collected for this category of passenger, even though annual costs are over $25 million for this service. We considered proposing a new bus passenger fee, but recognized that this would require establishing the infrastructure and process for bus companies to collect and remit the fees since CBP does not have a comparable fee. In addition, the barriers for entry into the bus passenger industry are much lower compared to air and cruise vessel industries. As a result, there are more bus companies entering and exiting the industry, which would make fee collection and monitoring difficult. However, we intend to gather additional information to determine if there are other ways to collect this fee in the future, which would be addressed through a future rulemaking.
- POV passenger: No fees are currently collected for this category of passenger, even though annual costs are over $160 million. The high cost of creating and operating fee collections, and considerations about potential backups of POVs at the ports of entry, led us to recommend that POV passengers continue to not be subject to an AQI user fee.
- Pedestrians: No fees are currently collected for the inspection of pedestrians arriving in the United States, even though the annual costs are over $38 million for this service. The high cost of creating and operating fee collections and considerations about potential backups of pedestrians at the ports of entry led us to recommend that arriving pedestrians continue to not be subject to an AQI user fee at this time.
- Private aircraft: No fees are currently collected for the inspection of private aircraft and their passengers. The cost of less than $13 million, and the additional cost of creating and operating fee collections, led us to recommend that private aircraft and their passengers continue to not be subject to an AQI user fee.
- Private maritime vessel: No fees are currently collected for the inspection of private maritime vessels and their passengers. The cost of less than $6 million, and the additional cost of creating and operating fee collections, led us to recommend that private maritime vessel passengers continue to not be subject to an AQI user fee.
- Commodity import permit: No fee is currently charged for commodity import permits. We considered establishing a separate fee, but concerns about the impact on importers and relationships with trading partners led us to not propose this fee.
- Pest import permit: No fee is currently charged for pest import permits. We considered establishing a separate fee, but we did not want to discourage the research associated with pest import permits because this research benefits United States agriculture and ecosystem overall.

Accordingly, the costs of these AQI services will continue to be covered through appropriated funding.

Periodic Updates to User Fees

The Department is seeking public comment on the frequency and methodology for updating the AQI user fees. Currently there is no established schedule for updating the fees, which has led to long gaps between updates and substantial increases in fees when updates are made. The Department is particularly interested in comments on whether fees should be updated more frequently, e.g., every 2 years, and whether the updates should be made through a rulemaking or some other means such as a notice-based process that provides an opportunity for public comment. We are also interested in comments regarding the possibility of phasing in the updated fees when there may be an economic hardship due to factors such as substantial increases due to long gaps between updates or, as in the case with this proposed rule, a comprehensive review to determine the current cost of specific AQI services indicates that the AQI program is not recovering the full cost of its fee services.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

We have prepared a regulatory impact analysis (RIA) for this rule. The RIA provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The RIA also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The RIA is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

APHIS is proposing to amend the user fee regulations by adding new fee categories and adjusting current fees charged for certain agricultural quarantine and inspection (AQI) services. We are also proposing to alter or remove certain fee caps. We have determined that revised user fee categories and revised user fees are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

AQI fees are mandated to be cost-based and paid by the users of the AQI services to ensure that recipients bear the costs of the services instead of the American taxpayer. In our RIA, benefits and costs of the proposed changes to the AQI user fee schedule are evaluated in accordance with Executive Orders 12866 and 13563. Expected effects for small entities are evaluated as required by the Regulatory Flexibility Act.

AQI services benefit U.S. agricultural and natural resources by protecting them from the inadvertent introduction of foreign pests and diseases that may enter the country and the threat of intentional introduction of pests or pathogens as a means of agroterrorism. Failure to adjust these fees to account for full cost recovery, particularly in the present fiscal climate, has the potential to cause a decrease in AQI services provided. Efforts would be made to address the greatest risk and minimize, to the extent allowed by available resources, significant negative impact on U.S. industries.

The proposed changes in user fees would more closely align, by class, the cost of AQI services provided and user fee revenue received. The proposed fee schedule would better reflect the costs of AQI services provided commercial vessels, commercial trucks, commercial railcars, commercial aircraft, and international air passengers arriving at U.S. ports; newly include fees for additional classes of recipients of AQI services; remove user fee caps for commercial vessels and commercial railcars; and increase the fee cap for commercial trucks. Fee caps refer to limits on the number of times a fee must be paid for a specific truck (with transponder), vessel, or railcar in a calendar year. The current and proposed AQI user fee rates are shown in table 8.

TABLE 8—CURRENT AND PROPOSED AQI USER FEE RATES

[Dollars]

User fee class	Current	Proposed
Air passenger	$5	$4
Commercial aircraft	70.75	225
Commercial cargo vessel	496	825
Commercial truck	5.25	8
Commercial truck with transponder (one) annual payment)	105	320
Commercial cargo railcar	7.75	2
Sea passenger	no fee	2
Treatment	no fee	375

APHIS used activity-based costing to determine the proposed rate adjustments for classes that currently pay user fees and the proposed rates for newly charged classes. The two classes that would be newly charged user fees under the proposed rule are international sea (cruise) passengers and recipients of AQI treatment services. Currently, the cost of AQI services received by these entities is borne by other user fee classes and/or taxpayers through appropriated funding. Elimination of the user fee caps for commercial railcars and commercial vessels would more closely align the user fee revenue received with the cost of providing AQI services for rail and vessel cargo. We propose to retain the cap for commercial trucks because of the increased efficiency gained through the use of transponders at border inspections. The cap for commercial trucks would be increased, however, and these businesses would pay in fees a larger share of the cost of the AQI services they receive.

Under the proposed fee structure, it is expected that AQI user fee revenue for fiscal year (FY) 2014 would be about $700.1 million, as compared to about $573.1 million under the current fee schedule, an increase of $127 million (table 9), of which $94.5 million is due to the change in fees and fee structure and $32.5 million is due to workload changes as valued at the proposed fee rates. Reliance on appropriated funds to finance certain AQI services is expected to be reduced by $46.8 million, assuming that the total cost of AQI services, $948.9 million, would be the same with or without adoption of the proposed fee schedule, since the level of AQI services provided would not change with the fee collections under the proposed rule available to APHIS and CBP. A projected AQI program deficit of $54.5 million under the current fee schedule would not be incurred. Net revenue of the AQI program under the proposed fee schedule is expected to total about $25.7 million, which would be used to maintain the AQI program's reserve fund. The reserve fund ensures that AQI program operations can continue without interruption when service volumes fluctuate due to economic conditions or other circumstances and CBP and APHIS are able to adjust their activity to account for the changed economic conditions.

TABLE 9—EXPECTED AQI USER FEE REVENUE, APPROPRIATED AQI FUNDING UNDER THE CURRENT AND PROPOSED USER FEE SCHEDULES, AND COST OF AQI SERVICES, FY 2014

[Million dollars]

	Current fee schedule	Proposed fee schedule	Change
AQI revenue:			
User fees	$573.1	$700.1	$127.0
Appropriated funding	321.3	274.5	−46.8
AQI total revenue	894.4	974.6	80.2
AQI total cost	948.9	948.9	0
AQI revenue minus cost	−54.5	25.7	80.2

Tables showing similar expected AQI revenue effects of the proposed fee schedule for FYs 2015–2017 are presented in the body of the RIA. Respectively for these 3 years, in comparison to projections under the current fee schedule, AQI user fee revenue is expected to be larger by $130.7 million, $134.5 million, and $138.4 million; appropriated funding of AQI services is expected to be smaller by $37.6 million, $78.2 million, and $78.6 million; and net revenue of $39.0 million, $39.1 million, and $60.3 million is expected to be available to maintain the AQI reserve fund.[1]

APHIS considered a number of alternatives for revising the AQI user fees. Some of the alternatives, such as increasing all current fees by the same percentage, were rejected because they clearly would not meet the objective of making the fees paid by users in the various fee classes more commensurate with the costs of the AQI services provided for each class. Other alternatives were rejected because the transaction costs of creating and operating fee collection systems for certain classes, such as bus passengers, private vehicles, and pedestrians, would be overly burdensome.

APHIS then focused on three remaining alternatives composed of different combinations of paying classes. The first or preferred alternative is the proposed rule, with user fee classes as shown in table 8. The second alternative differs from the first by not including user fees for recipients of AQI treatment services. Under the third alternative, recipients of commodity import permits and pest import permits would pay user fees, in addition to the classes that would pay fees under the proposed rule.

Under all three alternatives, international sea (cruise) passengers would pay a user fee for services they receive that are currently funded by other AQI service recipients and/or through appropriated funding. In addition, the preferred alternative would newly include payment of fees by users of AQI treatment services. Under alternative 2, the cost of providing AQI treatment services would continue to be covered by user fees paid by other classes. For this reason, Alternative 2 was rejected because AQI costs and revenues would be less commensurable by class than under the preferred alternative.

Alternative 3 would include user fees for recipients of commodity import permits and pest import permits, classes not charged fees under the preferred alternative. In these instances, APHIS found that there are overriding concerns. Charging a user fee for commodity import permits could be counterproductive in terms of our relations with trading partners; negative reactions by other countries could potentially affect U.S. export markets. Pest import permits are normally requested for research purposes. Charging a fee for pest import permits, which activity-based costing indicates would need to be set at more than $2,000, could have the unintended consequence of discouraging research that directly benefits U.S. agriculture. For these reasons, APHIS decided against the selection of alternative 3.

In table 10, we compare the cumulative expected revenue changes over 4 years for the alternatives. In all cases, the baseline for comparison is continuation of the current AQI user fee schedule. AQI services performed and the cost of providing those services would be the same under each alternative. All three alternatives would ensure that the costs of providing AQI services are covered and the reserve fund is maintained. Relative to the other alternatives, the preferred alternative would result in the smallest increase in user fee receipts and, less noteworthy, the largest decrease in appropriated funding.

TABLE 10—CHANGES IN EXPECTED AQI USER FEE REVENUE, APPROPRIATED AQI FUNDING, AND NET REVENUE UNDER THE THREE ALTERNATIVE USER FEE SCHEDULES, SUMMED OVER FYS 2014–2017

[Million dollars]

Expected change in:	Preferred alternative (proposed rule)	Alternative 2	Alternative 3
FYs 2014–2017			
AQI revenue:.			
User fees	$530.6	$570.2	$584.7
Appropriated funding	−241.2	−236.5	−236.5
AQI total revenue	289.5	333.7	348.3
AQI total cost	0	0	0

[1] All values in the RIA are nominal, that is, they include projected inflation.

TABLE 10—CHANGES IN EXPECTED AQI USER FEE REVENUE, APPROPRIATED AQI FUNDING, AND NET REVENUE UNDER THE THREE ALTERNATIVE USER FEE SCHEDULES, SUMMED OVER FYS 2014–2017—Continued

[Million dollars]

Expected change in:	Preferred alternative (proposed rule)	Alternative 2	Alternative 3
AQI revenue minus cost	289.5	333.7	348.3

Note: Columns may not sum due to rounding.

Economic effects under each of the three alternatives would derive from the increase or reduction in costs borne by affected importers and international passengers because of the changes in AQI user fees and concurrent reduced reliance on appropriated funding of AQI user fees. Impacts would depend on the magnitude of the changes, and for importers, on the ability of suppliers to pass along or absorb the costs, and for inbound international passengers, on the ability of airlines and vessels to do likewise. In theory, higher user fees increase the cost of imports and the supplier may have incentive to send fewer goods to the United States or international passengers may have less incentive to travel to the United States. Lower user fees, in theory, create the opposite incentives.

The proposed changes in user fees are very small in comparison to the overall value of the commodities imported or the price of an international ticket, and therefore are expected to have negligible impact on imports or the number of international passengers. Estimated changes in user fee revenue relative to the output of the affected sectors represent, in total, a decline of about two-hundredths of one percent, and range from a decline of about six-thousandths of one percent in the trucking industry to a decline of about one-tenth of one percent in the airline industry.[2] We cannot determine what would be the effect of the projected reductions in appropriated funding of AQI services, but observe that the reductions may counterbalance the negligible impacts of the user fee increases to some extent.

Output and employment impacts for FY 2014 under the three alternatives, shown in table 11, were modeled for APHIS by a contracted consultancy. The model results indicate that U.S. output and employment would decline under all three alternatives, with the smallest declines expected under the preferred alternative. Modeled output and employment effects for FYs 2015–2017, as well as output effects by class for FY 2014, are similarly shown in the body of the RIA. We expect the economic effects of the proposed user fee revisions for several of the classes, if they occur at all, to be extremely small.

TABLE 11—MODELED SHORT-RUN DIRECT EFFECTS FOR U.S. OUTPUT AND EMPLOYMENT OF THE THREE AQI USER FEE ALTERNATIVES, FY 2014

	Change in output (million dollars)	Change in employment (jobs)
Preferred alternative (proposed rule)	−$94	−1,090
Alternative 2	−122	−1,301
Alternative 3	−126	−1,400

The fee increases themselves and the newly charged fees for cruise passengers and for monitoring and conducting treatments are not costs to the economy as a whole, but rather transfer payments. Transfer payments are monetary payments from one group to another that do not affect total resources available to society. While individual importers or passengers may experience financial burden from an increase in user fees (or relief when a fee is reduced), the AQI services are already being provided and therefore they are already counted as government costs. A fee rate adjustment to support full cost recovery is consistent with the intent of the relevant statues and regulations.

The increase in user fee funding of AQI services and closer alignment, by class, of user fee revenues and costs would be the principal outcomes of the proposed rule. For the 4 years FYs 2014–2017, user fee funding of AQI services under the proposed rule is projected to be $530.6 million more and appropriated funding of AQI services is projected to be $241.2 million less than would occur with continuation of the current fee schedule.

Increased reliance on user fee funding means that APHIS would more fully meet its statutory mandate to prescribe and collect cost-based fees for providing AQI services, including maintaining a reasonable reserve. It also means that appropriated funds that would be used to pay for AQI services under the existing user fee schedule may be available for other Federal uses. We are unable to determine how those appropriated funds that would no longer be used to pay for AQI services under the proposed rule may be otherwise used. We expect that the proposed increase in user fee funding and the decrease in appropriated funding would have small distributional effects that may be largely offsetting.

Firms most likely to be impacted by this rule are transportation businesses within the truck, rail, sea, and air cargo sectors that import goods into the United States. While the Small Business Administration has set guidelines for the definition of small businesses within each of those sectors, the size data do not distinguish between transportation firms that operate internationally and those firms that only

[2] Short-run impacts of the proposed fee changes are estimated to represent the following percentage changes from current output, by affected industry: Trucking industry, −0.006 percent; rail industry, 0.035 percent; vessel cargo industry, −0.005 percent; cruise ship industry, 0.003 percent; and air cargo and passenger industry, −0.102 percent.

operate within the United States. However, the effects of the proposed rule on firms within the transportation sector are expected to be limited, regardless of firm size. In addition, at least some portion of increased user fees may be passed on to consumers.

We invite public comment on the proposed rule, including comments on the expected impacts for small entities and how the proposed rule may be modified to reduce the burden for small entities consistent with the rule's objectives. Any comment suggesting changes to the proposed rule should be accompanied by supporting evidence and an explanation of why the changes should be considered and supporting evidence.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are proposing to amend 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.3 is amended as follows:

■ a. By revising the tables in paragraphs (b)(1), (c)(1), (d)(1), and (e)(1).

■ b. In paragraph (b)(1), by removing the words ‘‘, not to exceed 15 payments in a calendar year (i.e., no additional fee will be charged for a 16th or subsequent arrival in a calendar year),’’.

■ c. In paragraph (c)(3)(i), by removing the words ‘‘20 times’’ and adding the words ‘‘40 times’’ in their place.

■ d. By revising paragraphs (f)(1), (f)(2)(i), (f)(8), and adding paragraph (h).

The revisions and additions read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(b) *Fee for inspection of commercial vessels of 100 net tons or more.* (1) * * *

Effective dates	Amount
Beginning [*effective date of final rule*]	$825

* * * * *

(c) *Fee for inspection of commercial trucks.* (1) * * *

Effective dates	Amount
Beginning [*effective date of final rule*]	$8

* * * * *

(d) *Fee for inspection of commercial railroad cars.* (1) * * *

Effective dates	Amount
Beginning [*effective date of final rule*]	$2

* * * * *

(e) *Fee for inspection of commercial aircraft.* (1) * * *

Effective dates	Amount
Beginning [*effective date of final rule*]	$225

* * * * *

(f) *Fee for inspection of international passengers.* (1) Except as specified in paragraph (f)(2) of this section, each passenger aboard a commercial aircraft or cruise ship who is subject to inspection under part 330 of this chapter or 9 CFR, chapter I, subchapter D, upon arrival from a place outside of the customs territory of the United States, must pay an AQI user fee. The AQI user fee for each arrival is shown in the following table:

Effective dates [1]	Passenger type	Amount
Beginning [*effective date of final rule*]	Commercial aircraft	$4
Beginning [*effective date of final rule*]	Cruise ship	2

[1] Persons who issue international airline and cruise line tickets or travel documents are responsible for collecting the AQI international airline passenger user fee and the international cruise ship passenger user fee from ticket purchasers. Issuers must collect the fee applicable at the time tickets are sold. In the event that ticket sellers do not collect the AQI user fee when tickets are sold, the air carrier or cruise line must collect the user fee that is applicable at the time of departure from the passenger upon departure.

(2) * * *

(i) Crew members who are on duty aboard a cruise ship;

* * * * *

(8) *Limitation on charges.* Airlines and cruise lines will not be charged reimbursable overtime for passenger inspection services required for any aircraft or cruise ship on which a passenger arrived who has paid the international passenger AQI user fee for that flight or cruise.

* * * * *

(h) *Fee for conducting and monitoring treatments.* (1) Each importer of a consignment of articles that require treatment upon arrival from a place outside of the customs territory of the United States, either as a preassigned condition of entry or as a remedial measure ordered following the inspection of the consignment, must pay an AQI user fee. The AQI user fee is charged on a per-treatment basis, i.e., if two or more consignments are treated together, only a single fee will be charged, and if a single consignment is split or must be retreated, a fee will be charged for each separate treatment conducted. The AQI user fee for each treatment is shown in the following table:

Effective dates	Amount
Beginning [*effective date of final rule*]	$375

(2) *Treatment provider.* (i) Private entities that provide AQI treatment services to importers are responsible for collecting the AQI treatment user fee from the importer for whom the service is provided. Treatment providers must collect the AQI treatment fee applicable at the time the treatment is applied.

(ii) When AQI treatment services are provided by APHIS, APHIS will collect the AQI treatment fee applicable at the time the treatment is applied from the person receiving the services. Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to ''The Animal and Plant Health Inspection Service.''

(3) *Collection of fees.* (i) In cases where APHIS is not providing the AQI treatment and collecting the associated fee, AQI user fees collected from importers pursuant to paragraph (h) of this section shall be held in trust for the United States by the person collecting such fees, by any person holding such fees, or by the person who is ultimately responsible for remittance of such fees to APHIS. AQI user fees collected from importers shall be accounted for separately and shall be regarded as trust funds held by the person possessing such fees as agents, for the beneficial interest of the United States. All such user fees held by any person shall be property in which the person holds only a possessory interest and not an equitable interest. As compensation for collecting, handling, and remitting the AQI treatment user fees, the person holding such user fees shall be entitled to any interest or other investment return earned on the user fees between the time of collection and the time the user fees are due to be remitted to APHIS under this section. Nothing in this section shall affect APHIS' right to collect interest from the person holding such user fees for late remittance.

(4) *Remittance and statement procedures.* (i) The treatment provider that collects the AQI treatment user fee must remit the fee to [address to be added in final rule].

(ii) AQI treatment user fees must be remitted to [address to be added in final rule] for receipt no later than 31 days after the close of the calendar quarter in which the AQI user fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3717).

(iii) The remitter must mail with the remittance a written statement to [address to be added in final rule]. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

(iv) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to ''The Animal and Plant Health Inspection Service.''

* * * * *

Done in Washington, DC, this 21st day of April 2014.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2014–09466 Filed 4–24–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0256; Directorate Identifier 2013–NM–214–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This proposed AD was prompted by reports of dual pitch rate sensor (PRS) failures, resulting in autopilot disconnects. This proposed AD would require an inspection to determine the PRS part number and replacement if necessary. We are proposing this AD to prevent a dual PRS failure that could cause an automatic disengagement of the autopilot and autoland, which may prevent continued safe flight and landing if disengagement occurs at low altitude and the flight crew is unable to safely assume control and execute a go-around or manual landing.

DATES: We must receive comments on this proposed AD by June 9, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0256; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0256; Directorate Identifier 2013–NM–214–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports of dual PRS failures on Model 777 airplanes causing the primary flight computers (PFCs) to transition from primary mode to secondary mode, resulting in autopilot disconnects. Vibration testing of the sensors identified a mechanical resonance, which can result in an erroneous sensor output that the PFCs would interpret as a PRS failure. It is suspected that variability in manufacturing tolerances could cause differences in the resonant frequency for individual PRS and, when combined with variability in the airplane vibration environment, results in a PRS failure. This condition, if not corrected, could cause an automatic disengagement of the autopilot and autoland, which may prevent continued safe flight and landing if disengagement occurs at low altitude and the flight crew is unable to safely assume control and execute a go-around or manual landing.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 777–27–0115, dated May 22, 2013. For information on the procedures, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0256.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, including an inspection to determine the PRS part number and replacement if necessary.

Costs of Compliance

We estimate that this proposed AD affects 47 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170	$0	$170	$7,990

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have received no definitive data that would enable us to provide the cost of parts specified in this proposed AD. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement (Up to 4 PRSs per airplane)	Up to 4 work-hours × $85 per hour = $340	$0	Up to $340.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0256; Directorate Identifier 2013–NM–214–AD.

(a) Comments Due Date

We must receive comments by June 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–27–0115, dated May 22, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of dual pitch rate sensor (PRS) failures causing the primary flight computers to transition from primary mode to secondary mode, resulting in autopilot disconnects. We are issuing this AD to prevent a dual PRS failure that could cause an automatic disengagement of the autopilot and autoland, which may prevent continued safe flight and landing if disengagement occurs at low altitude and the flight crew is unable to safely assume control and execute a go-around or manual landing.

(f) Compliance

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

(g) Inspection

Within 60 months after the effective date of this AD, inspect to determine the part numbers of all four PRSs, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0115, dated May 22, 2013. For airplanes in group 1, as identified in Boeing Special Attention Service Bulletin 777–27–0115, dated May 22, 2013: A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the PRS can be conclusively determined from that review.

(h) Replacement

If any PRS having P/N 402875–05–01 is found during the inspection required by paragraph (g) of this AD, before further flight, replace with a PRS having P/N 402875–03–01, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0115, dated May 22, 2013.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a PRS having P/N 402875–05–01 on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 18, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–09409 Filed 4–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–0452]

Novus International, Incorporated; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Novus International, Inc., proposing that the food additive regulations be amended to provide for the safe use of ethoxyquin in rendered fats and oils used in animal feed.

DATES: Submit either electronic or written comments on the petitioner's environmental assessment by May 27, 2014.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), we are giving notice that we have filed a food additive petition (FAP 2283) submitted by Novus International, Inc., 20 Research Park Dr., Saint Charles, MO 63304. The petition proposes to amend the food additive regulations in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of ethoxyquin in rendered fats and oils used in animal feed.

We are reviewing the potential environmental impact of this petition. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), we are placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment.

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. We will post comments we receive to the docket at *http://www.regulations.gov.* We will also place on public display, in the Division of Dockets Management and at *http://www.regulations.gov*, any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on our review, we find that an environmental impact statement is not required, and this petition results in a regulation, we will publish the notice of availability of our finding of no significant impact and the evidence supporting that finding with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: April 22, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–09406 Filed 4–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0272]

RIN 1625–AA09

Drawbridge Operation Regulation; Saugus River, Revere and Lynn, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the General Edwards SR1A Bridge across the Saugus River at mile 1.7, between Revere and Lynn, Massachusetts. The bridge owner, Massachusetts Department of Transportation, submitted a request to require a two-hour advance notice for bridge openings at all times based upon infrequent requests to open the draw during past years. It is expected that this change to the regulation will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before June 24, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0272 using any one of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Program, telephone 617–223–8364, email *john.w.mcdonald@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Tables of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2014–0272), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2014–0272 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0272) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The General Edwards SR1A Bridge across the Saugus River at mile 1.7, between Revere and Lynn, Massachusetts, has a vertical clearance of 27 feet at mean high water and 36 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.618(b).

The waterway users are commercial lobster boats and seasonal recreational vessels of various size.

The owner of the bridge, Massachusetts Department of Transportation, submitted a request to the Coast Guard to change the drawbridge operating regulations that presently require the bridge to open on signal; except that, from April 1 through November 30, from midnight through 8 a.m. at least an eight hour advance notice is required for bridge openings, and at all times from December 1 through March 31, at least an eight hour

advance notice is required for bridge openings.

Under this proposed rule the bridge would open on signal at all times if at least a two-hour advance notice is given by calling the number posted at the bridge.

C. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.618(b) that would allow the General Edwards SR1A Bridge to open on signal at all times if at least a two-hour advance notice is given by calling the number posted at the bridge.

As a result of the vertical clearance under the bridge, 27 feet at mean high water and 36 feet at mean low water, the bridge has received few requests to open during past years. There were no requests to open the bridge in 2013, because the bridge was closed due to a major rehabilitation. There were 20 requests to open in 2012, 14 requests to open in 2011, 55 requests to open in 2010, and 141 openings in 2009, 59 of which were test openings.

Based on the above information, the Coast Guard believes it is reasonable to allow the General Edwards SR1A Bridge to open on signal at all times if at least a two-hour advance notice is given. This decision was based on the number requests to open the bridge during the past years and the relatively high vertical clearance under the bridge.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rule is not a significant regulatory action because the bridge will still open for all vessel traffic at all times provided the two-hour advance notice is given.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The General Edwards SR1A Bridge will open on signal at all times provided at least a two hour advance notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.618, paragraph (b), to read as follows:

§ 117.618 Taunton River.

* * * * *

(b) The draw of the General Edwards SR1A Bridge, mile 1.7, between Revere and Lynn, shall open on signal at all times if at least a two-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: April 15, 2014.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2014–09384 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0082]

RIN 1625–AA00

Safety Zone; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations for annual, combined marine events that require the establishment of a temporary safety zone within the Captain of the Port Zone Buffalo on the Cuyahoga River, Cleveland, OH. This proposed safety zone regulation is necessary to protect the surrounding public, spectators, participants, and vessels from the hazards associated with the rowing regatta in the narrow waterway of the Cuyahoga River. This proposed rule is intended to restrict vessels annually from a portion of the Cuyahoga River for up to 10 hours during the combined Dragon Boat Festival and the Head of the Cuyahoga Regatta.

DATES: Comments and related materials must be received by the Coast Guard on or before May 27, 2014. Requests for public meetings must be received May 15, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0082 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Delivery:* at the same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, email *SectorBuffaloMarineSafety@uscg.mil* or LT Hillary Allegretti, Marine Safety Unit Cleveland at *Hillary.a.allegretti@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
MM Mile Marker

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2014–0082), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when the comment is successfully transmitted. If you fax, hand deliver, or mail your comment, it will be considered received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2014–0082] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a

Comment'' on the line associated with this notice of proposed rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0082) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. If you want us to hold a public meeting, submit your request by May 15, 2014, using one of the methods specified under **ADDRESSES**. Any subsequent meetings held where public comment is sought to aid this rulemaking would be held at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Head of the Cuyahoga (HOTC) rowing regatta has occurred annually for over a decade and the Dragon Boat Festival for the last 8 years. In response to past years' events, the Coast Guard has established a temporary safety zone to protect the boating public. For example, in 2013, the Captain of the Port Buffalo initiated a rulemaking (78 FR 42736, July 17, 2013) to ensure the safety of spectators and vessels during the rowing event. The safety zone proposed in this notice of proposed rulemaking is identical in size, location, and effect as that established by the 2013 rulemaking.

C. Basis and Purpose

As mentioned in the ''Regulatory History and Information'' section, the HOTC is an annual rowing regatta that has taken place for over a decade. The HOTC takes place on the Cuyahoga River along a 4800 meter course and attracts numerous rowing clubs and programs from across the U.S. Typically, the event occurs on the third Saturday of September between the hours of 7 a.m. and 4 p.m. In 2014, the HOTC will occur between 6 a.m. and 4 p.m. on September 20.

In conjunction with the HOTC, the Seventh Annual Cleveland Dragon Boat Festival will take place from Superior/Nautica Bend to just north of the Detroit Superior Viaduct Bridge. The Dragon Boat festival will feature three head-to-head races being held over the course of the day.

The Captain of the Port Buffalo has determined that the HOTC and the Cleveland Dragon Boat Festival rowing events present significant hazards to public spectators and participants.

D. Discussion of Proposed Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo proposes to establish a safety zone that will ensure the safety of spectators and vessels during the HOTC and the Cleveland Dragon Boat Festival. The proposed safety zone would be enforced on the third Saturday of September of each year from 6 a.m. until 4 p.m. As noted above, in 2014, that date will be September 20.

The proposed safety zone would encompass all waters of the Cuyahoga River, Cleveland, OH from a line drawn perpendicular from position 41°29′55″ N, 081°42′23″ W (NAD 83) just past the Detroit-Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular at position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge at MM4.79 of the Cuyahoga River.

Entry into, transiting, or anchoring within the proposed safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Additionally, all vessels over 65 feet intending to transit, moor or conduct operations to include loading or discharging of cargo or passengers in the Cuyahoga River while the safety zone is being enforced should request permission from the COTP or his/her designated representative at least 12 hours before they wish to transit the zone.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this proposed rule will be relatively small and enforced for relatively short time. Also, the proposed safety zone is designed to minimize its impact on navigable waters.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: the owners of operators of vessels intending to transit or anchor in a portion of the Cuyahoga River near Cleveland, Ohio between 6

a.m. to 4 p.m. on the third Saturday of September each year.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zone will be enforced for only 10 hours annually. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. The COTP or his/her designated representative would attempt to issue annual maritime advisories widely available to users of the river to provide additional advance notice of the safety zone and the date it would be enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that comment on this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.940 to read as follows:

§ 165.940 Safety Zone; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River, Cleveland, OH.

(a) *Location.* The following area is a safety zone: all waters of the Cuyahoga River, Cleveland, OH between a line drawn perpendicular to the river banks from position 41°29′55″ N, 081°42′23″ W (NAD 83) just past the Detroit-

Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular to the river banks at position 41°28′32″ N, 081°40′16″ W (NAD 83) just south of the Interstate 490 bridge at MM 4.79 of the Cuyahoga River.

(b) *Enforcement period.* The third Saturday of September each year.

(c) *Definitions.* The following definitions apply to this section:

(1) ''On-scene Representative'' means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Buffalo to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

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

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

(2) The safety zone identified in paragraph (a) of this section is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

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

(4) Additionally, all vessels over 65 feet intending to transit, moor or conduct operations to include loading or discharging of cargo or passengers in the Cuyahoga River while the safety zone is being enforced should request permission from the COTP or his/her designated representative at least 12 hours before the zone is established.

(e) *Exemption.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

Dated: March 19, 2014.

B. W. Roche,

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

[FR Doc. 2014–09383 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0180]

RIN 1625–AA00

Safety Zone; Arts Project Cherry Grove Pride Week Fireworks Display, Great South Bay; Cherry Grove, Fire Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Great South Bay near Cherry Grove, Fire Island, NY for the Arts Project Cherry Grove Pride Week fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. The safety zone will facilitate public notification of the event and provide protective measures for the maritime public and event participants from the hazards associated with the fireworks display. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2014.

Requests for public meetings must be received by the Coast Guard on or before May 2, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4559, *Scott.A.Baumgartner@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2014–0180] in

the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0180) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before May 2, 2014 Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This is a first time event with no regulatory history. However, there is an annually recurring event, the Arts Project Cherry Grove fireworks display held in the same location on a single day during the first two weeks of June. The safety zone established for that recurring event was part of the final rule entitled, ''Safety Zones and Special Local Regulations; Recurring Marine Events in Captain of the Port Sector Long Island Sound Zone'' that was published on May 24, 2013 in the **Federal Register** (78 FR 31406).

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule is necessary to promote the safety of life on navigable waterways during the Arts Project Cherry Grove Pride Week fireworks display in Great South Bay near Cherry Grove, Fire Island, NY.

D. Discussion of Proposed Rule

This temporary rule proposes to establish a safety zone for the Arts Project Cherry Grove Pride Week fireworks display. This proposed regulated area includes all waters of Great South Bay within a 600 foot radius of the fireworks barge located approximately 400 yards north of the main dock in Cherry Grove, Fire Island, NY.

This rule will be effective from 8:30 p.m. on June 28, 2014 through 10:30 p.m. on June 29, 2014.

The fireworks display is scheduled to occur and this regulation will be enforced from 8:30 p.m. until 10:30 p.m. on June 28, 2014. If the event is cancelled due to inclement weather, then this regulation will be enforced from 8:30 p.m. until 10:30 p.m. on June 29, 2014.

Because spectator vessels are expected to congregate around the location of the fireworks display, this regulated area is necessary to protect both spectators and participants from the hazards created by unexpected pyrotechnics detonation, and burning debris. This proposed rule would temporarily establish a regulated area to restrict vessel movement on the navigable waters around the location of the fireworks display to reduce the safety risks associated with it.

Public notifications may be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated area will be of limited duration, the area covers only a small portion of the navigable waterways and waterway users may transit around the area. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the effective period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area will be of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local

Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0180 to read as follows:

§ 165.T01–0180 Safety Zone; Arts Project Cherry Grove Pride Week Fireworks Display; Great South Bay; Cherry Grove, Fire Island, NY

(a) *Location.* The following area is a safety zone: All waters of Great South Bay within a 600-foot radius of the fireworks barge located about 400 yards north of the main dock at Cherry Grove, Fire Island, NY in approximate position 40°39′49.06″ N, 073°05′27.99″ W North American Datum 1983.

(b) *Enforcement Period.* This rule will be enforced on June 28, 2014 from 8:30 p.m. until 10:30 p.m. If the event is postponed due to inclement weather, then this rule will be enforced on June 29, 2014 from 8:30 p.m. until 10:30 p.m.

(c) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within

this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

(1) Definitions. The following definitions apply to this section:

(i) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(ii) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(iii) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(2) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector Long Island Sound command center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(4) Fireworks barges used in this location will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: April 8, 2014.

E. J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2014–09358 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0188]

RIN 1625–AA00

Safety Zone; Celebrate the Amboys Fireworks; Raritan Bay, Perth Amboy, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Raritan Bay in the vicinity of Perth Amboy, NJ for a fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of Raritan Bay before, during, and immediately after the fireworks event.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2014.

Requests for public meetings must be received by the Coast Guard on or before May 2, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov*.

(2) Fax: 202–493–2251.

(3) Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Kristopher Kesting, Sector New York, Waterways Management, U.S. Coast Guard; Telephone (718) 354–4154, E-Mail *Kristopher.R.Kesting@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0188) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0188) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before May 2, 2014. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

There is no prior Regulatory history for this proposed safety zone.

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display. Based on the inherent hazards associated with fireworks, the Captain of the Port (COTP) New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. The proposed temporary safety zone will restrict vessel movement in the Raritan Bay around the location of the fireworks launch platform before, during, and after the fireworks display.

D. Discussion of Proposed Rule

Garden State Fireworks is sponsoring a fireworks display for the Celebrate the Amboys 4th of July Celebration on the navigable waters of Raritan Bay in the vicinity of Perth Amboy, NJ. The proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display will occur from approximately 9:15 p.m. until approximately 9:45 p.m. on July 4, 2014. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, this zone will be effective from approximately 8:45 p.m. until approximately 10:15 p.m. on July 4, 2014.

The proposed safety zone will include all navigable waters of Raritan Bay within a 360 yard radius around position 40°29′16.8″ N, 074°15′32.4″ W. Vessels will still be able to transit the surrounding area and may be authorized to transit through the proposed safety zone with the permission from the COTP. The COTP does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The fireworks barge will also have a sign on its port and starboard side labeled ''FIREWORKS—STAY AWAY.'' The sign will consist of 10'' high by 1.5'' wide red lettering on a white background.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard's enforcement of this proposed safety zone will be of short duration, lasting only 90 minutes. The proposed safety zone will restrict access to only a small portion of the navigable waterways of Raritan Bay. Vessels will be able to navigate around the proposed safety zone. Furthermore, vessels may be authorized to transit through the proposed safety zone with the permission of the COTP.

2. Impact on Small Entities

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

This proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a small portion of the Raritan Bay during the effective period.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for only 90 minutes late at night when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

■ 2. Add § 165.T01.0188 to read as follows:

§ 165.T01–0188 Safety Zone; Celebrate The Amboys Fireworks; Raritan Bay, Perth Amboy, NJ.

(a) *Regulated Area.* The following area is a temporary safety zone: All navigable waters of Raritan Bay within a 360 yard radius around position 40°29′16.8″ N, 074°15′32.4″ W

(b) *Effective Period.* This rule will be effective from approximately 8:45 p.m. to approximately 10:15 p.m. on July 4, 2014.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. A designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP or a designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

Dated: April 4, 2014.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–09369 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0239]

RIN 1625–AA00

Safety Zone: Belle Haven Club Fireworks Display, Byram Harbor; Greenwich, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Byram Harbor near Greenwich, CT for the Belle Haven Club fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. The safety zone will facilitate public notification of the event and provide protective measures for the maritime public and event participants from the hazards associated with this event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2014.

Requests for public meetings must be received by the Coast Guard on or before May 2, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4559, *Scott.A.Baumgartner@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2014–0239] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2014–0239) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before May 2, 2014. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This is a first time event with no regulatory history.

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064;

Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule is necessary to promote the safety of life on navigable waterways during the Belle Haven Club fireworks display in Byram Harbor near Greenwich, CT.

D. Discussion of Proposed Rule

This temporary rule proposes to establish a safety zone for the Belle Haven Club fireworks display. This proposed regulated area includes all waters of Byram Harbor within a 600 foot radius of the fireworks barge located approximately 300 yards south of Belle Haven Club in Greenwich, CT.

This rule will be effective from 8:30 p.m. on June 14, 2014 through 10:00 p.m. on June 15, 2014.

The fireworks display is scheduled to occur and this regulation will be enforced from 8:30 p.m. until 10:00 p.m. on June 14, 2014. If the event is cancelled due to inclement weather, then this regulation will be enforced from 8:30 p.m. until 10:00 p.m. on June 15, 2014.

Because spectator vessels are expected to congregate around the location of the fireworks display, this regulated area is necessary to protect both spectators and participants from the hazards created by unexpected pyrotechnics detonation, and burning debris. This proposed rule would temporarily establish a regulated area to restrict vessel movement on the navigable waters around the location of the fireworks display to reduce the safety risks associated with it.

Public notifications may be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated area will be of limited duration, the area covers only a small portion of the navigable waterways and waterway users may transit around the area. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the effective period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated area will be of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0239 to read as follows:

§ 165.T01–0239 Safety Zone; Belle Haven Club Fireworks Display; Byram Harbor; Greenwich, CT.

(a) *Location.* The following area is a safety zone: All waters of Byram Harbor within a 600-foot radius of the fireworks barge located in approximate position 40°00′00.66″ N, 073°38′01.20″ W North American Datum 1983.

(b) *Enforcement Period.* This rule will be enforced on June 14, 2014 from 8:30 p.m. until 10:00 p.m. If the event is postponed due to inclement weather, then this rule will be enforced on June 15, 2014 from 8:30 p.m. until 10:00 p.m.

(c) Definitions. The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

(1) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector Long Island Sound command center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(2) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(3) Fireworks barges used in this location will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: April 8, 2014.

E. J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2014–09381 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0117]

RIN 1625–AA00

Safety Zone: Lady Liberty Sharkfest Swim; Upper New York Bay, Liberty Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Upper New York Bay in the vicinity of Liberty Island,

New York for a swim event. This temporary safety zone is necessary to protect the maritime public and event participants from the hazards associated with swim events taking place in a high vessel traffic area. This rule is intended to restrict all vessels from a portion of Upper New York Bay before and during the swim event.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2014.

Requests for public meetings must be received by the Coast Guard on or before May 2, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Kristopher Kesting, Sector NY Waterways Management, U.S. Coast Guard; Telephone (718) 354–4154, EMail *Kristopher.R.Kesting@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number (USCG–2013–1058) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2013–1058) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register**.

4. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before May 2, 2014. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

There is no prior Regulatory history for this proposed safety zone.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The COTP has determined that swimming events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this temporary rule establishes a temporary safety zone for the duration of the event.

This rule prevents vessels from entering into, transiting through, mooring or anchoring within the area specifically designated as the safety zone during the period of enforcement unless authorized by the COTP, or the designated representative.

D. Discussion of Proposed Rule

This temporary rule creates a safety zone for a swim event on the navigable waters of the Upper New York Bay. A portion of the navigable waters will be closed during the effective period to all vessel traffic except patrol crafts.

The swim event will occur from approximately 7:30 a.m. until approximately 9:30 a.m. on June 29, 2014. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels

before, during, and immediately after the swim event, this zone will be effective from approximately 7:00 a.m. until approximately 10:00 a.m. on June 29, 2014.

Vessels will still be able to transit the surrounding area and may be authorized to transit through the proposed safety zone with permission from the COTP or a designated representative. The COTP does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard's enforcement of this proposed safety zone will be of short duration, lasting only 3 hours. The proposed safety zone will restrict access to only a small portion of the navigable waterways of the Upper New York Bay. Vessels will be able to navigate around the proposed safety zone. Furthermore, vessels may be authorized to transit through the proposed safety zone with the permission of the COTP.

2. Impact on Small Entities

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

This proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a small portion of the Upper New York Bay during the effective period.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for only 3 hours in an area where vessel traffic is low. Additionally, vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

■ 2. Add § 165.T01–0117 to read as follows:

§ 165.T01–0117 Safety Zone; Lady Liberty Sharkfest Swim; Upper New York Bay, Liberty Island, NY

(a) *Regulated Area.* The following area is a temporary safety zone: all navigable waters of the Upper New York Bay bound by a line drawn from position 40°42′44.82″ N, 074°02′18.03″ W, east to position 40°42′28.86″ N, 074°01′30.22″ W, south to position 40°42′12.24″ N, 074°02′18.22″ W, west to position 40°41′35.38″ N, 074°03′12.61″ W, then north along the shoreline back to the point of origin.

(b) *Effective Period.* This rule will be effective from approximately 7:00 a.m. until approximately 10:00 a.m. on June 29, 2014.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. A designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for support vessels provided by the event sponsor, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP or a designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

Dated: March 28, 2014.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–09366 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0232]

RIN 1625–AA00

Safety Zone: Smith Point Triathlon, Narrow Bay; Mastic Beach, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Narrow Bay near Smith Point Park in Mastic Beach, NY for the swim event associated with the Smith Point Triathlon. The safety zone will provide protective measures for the event participants and the maritime public from the hazards associated with vessels operating in close proximity to the swim event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2014.

Requests for public meetings must be received by the Coast Guard on or before May 2, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4559, *Scott.A.Baumgartner@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2014–0178] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2014–0178) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before May 2, 2014. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The event sponsor, Event Power, has held the Smith Point Triathlon in the same location for the past seven years. Last year, the event was held on August 4, 2014 and a safety zone was established for the swim portion of the triathlon in a temporary final rule entitled ''Special Local Regulations and Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone''. This rulemaking was published on July 10, 2013 in the **Federal Register** (78 FR 41300).

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule is necessary to promote the safety of life on navigable waterways during the swim portion of the Smith Point Triathlon in Narrow Bay near Mastic Beach, NY.

D. Discussion of Proposed Rule

This temporary rule proposes to establish a safety zone for the swim event associated with the Smith Point Triathlon. This proposed regulated area includes all waters of Narrow Bay near Smith Point Park in Mastic Beach, NY that are near or within the three swim legs for this event and is specifically described as follows; the waters of Narrow Bay within the area bounded by land along its southern edge and points in position 40°44′14.28″ N 072°51′40.68″ W northerly through position 40°44′20.83″ N 072°51′40.68″ W, then easterly through position 40°44′20.83″ N 072°51′19.73″ W, then southerly through position 40°44′14.85″ N 072°51′19.73″ W (NAD 83). All positions are approximate.

This rule will be effective and enforced on June 1, 2014 from 6:00 a.m. through 9:30 a.m.

The Smith Point Triathlon incorporates swim legs that will place many swimmers in the navigable waters of Narrow Bay. A regulated area is required to minimize the hazards posed by spectators and other waterway users operating their vessels in close proximity to the event participants. The safety zone established for the swim event will minimize the risks to the event participants from this type of boat traffic and improve visibility and maneuverability for the safety vessels supporting the swim event.

Public notifications will be made to the local maritime community prior to the event through the Local Notice to Mariners and Broadcast Notice to Mariners.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated area will be of limited duration, the area covers only a small portion of the navigable waterways and waterway users may transit around the area. Also, mariners may request permission from the COTP Sector Long Island Sound or the

designated representative to transit the zone.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the effective period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area will be of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0232 to read as follows:

§ 165.T01–0232 Safety Zone; Smith Point Triathlon; Narrow Bay, Mastic Beach, NY.

(a) *Location.* The following area is a safety zone: Waters of Narrow Bay near Smith Point Park in Mastic Beach, NY within the area bounded by land along its southern edge and points in position 40°44′14.28″ N 072°51′40.68″ W northerly through position 40°44′20.83″ N 072°51′40.68″ W, then easterly through position 40°44′20.83″ N 072°51′19.73″ W, then southerly through position 40°44′14.85″ N 072°51′19.73″ W (NAD 83). All positions are approximate.

(b) *Enforcement Period.* This rule will be enforced on June 1, 2014 from 6:00 a.m. until 9:30 a.m.

(c) Definitions. The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

(1) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector Long Island Sound Command Center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(2) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(3) Vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.

Dated: April 8, 2014.

E. J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2014–09380 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0240]

RIN 1625–AA00

Safety Zone: Freeport Chamber of Commerce Fireworks Display, South Oyster Bay; Freeport, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of South Oyster Bay near the Guy Lombardo Marina in Freeport, NY for the Freeport Chamber of Commerce fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. The safety zone will facilitate public notification of the event and provide protective measures for the maritime public and event participants from the hazards associated with this event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before May 27, 2014.

Requests for public meetings must be received by the Coast Guard on or before May 2, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4559, *Scott.A.Baumgartner@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason

for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2014–0240] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0240) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before May 2, 2014. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This is a first time event with no regulatory history.

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule is necessary to promote the safety of life on navigable waterways during the Freeport Chamber of Commerce fireworks display in South Oyster Bay near the Guy Lombardo Marina in Freeport, NY.

D. Discussion of Proposed Rule

This temporary rule proposes to establish a safety zone for the Freeport Chamber of Commerce fireworks display. This proposed regulated area includes all waters of South Oyster Bay within a 600 foot radius of the fireworks launch site located at the Guy Lombardo Marina in Freeport, NY.

This rule will be effective from 8:45 p.m. on July 5, 2014 to 10:00 p.m. on July 12, 2014.

The fireworks display is scheduled to occur and this regulation will be enforced from 8:45 p.m. to 10:00 p.m. on July 5, 2014. If the event is cancelled due to inclement weather, then this regulation will be enforced from 8:45 p.m. until 10:00 p.m. on July 12, 2014.

Because spectator vessels are expected to congregate around the location of the fireworks display, this regulated area is necessary to protect both spectators and participants from the hazards created by unexpected pyrotechnics detonation, and burning debris. This proposed rule would temporarily establish a regulated area to restrict vessel movement on the navigable waters around the location of the fireworks display to reduce the safety risks associated with it.

Public notifications may be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated area will be of limited duration, the area covers only a small portion of the navigable waterways and waterway users may transit around the area. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the effective period. The temporary safety zone will not have a

significant economic impact on a substantial number of small entities for the following reasons: The regulated area will be of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0240 to read as follows:

§ 165.T01–0240 Safety Zone; Freeport Chamber of Commerce Fireworks Display; South Oyster Bay; Freeport, NY.

(a) *Location.* The following area is a safety zone: All waters of South Oyster Bay within a 600-foot radius of the fireworks launch site located at the Guy Lombardo Marina in Freeport, NY in approximate position 40°37′27.27″ N, 073°34′34.64″ W North American Datum 1983.

(b) *Enforcement Period.* This rule will be enforced on July 5, 2014 from 8:45

p.m. to 10:00 p.m. If the event is postponed due to inclement weather, then this rule will be enforced on July 12, 2014 from 8:45 p.m. to 10:00 p.m.

(c) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

(1) *Definitions.* The following definitions apply to this section:

(i) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(ii) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(iii) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(2) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector Long Island Sound command center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

Dated: April 8, 2014.

E. J. Cubanski III,

Captain, U. S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2014–09364 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 140407321–4321–01]

RIN 0648–XD233

Listing Endangered or Threatened Species: 90-Day Finding on a Petition To Revise the Critical Habitat Designation for the Southern Resident Killer Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 90-day petition finding; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 90-day finding on a petition from the Center for Biological Diversity to revise the critical habitat designation for the Southern Resident killer whale (*Orcinus orca*) Distinct Population Segment (DPS) under the Endangered Species Act (ESA). In November 2006 we issued a final rule designating approximately 2,560 square miles (6,630 square km) of inland waters of Washington State as critical habitat for the Southern Resident killer whale DPS. The petition requests we revise this critical habitat to include inhabited Pacific Ocean marine waters along the West Coast of the United States that constitute essential foraging and wintering areas. Additionally, the petition requests that we adopt protective in-water sound levels as a primary constituent element for both currently designated critical habitat and the proposed revised critical habitat. We find that the petition to revise critical habitat, viewed in the context of information readily available in our files, presents substantial scientific information indicating the petitioned action may be warranted. We are hereby initiating a review of the currently designated critical habitat to determine whether revision is warranted. To ensure a comprehensive review, we are soliciting scientific and commercial information pertaining to this action.

DATES: Scientific and commercial information pertinent to the petitioned action must be received by June 24, 2014.

ADDRESSES: You may submit comments, information, or data on this document, identified by the code NOAA–NMFS–2014–0041, by any of the following methods: Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0041,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail or hand-delivery: NMFS, West Coast Region, Protected Resources Division, 7600 Sand Point Way NE., Seattle, WA 98115. Attention—Lynne Barre, Seattle Branch Chief.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous), although submitting comments anonymously will prevent us from contacting you if we have difficulty retrieving your submission. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the petition and the list of references are available online at: *http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/esa_status.html.*

FOR FURTHER INFORMATION CONTACT: Lynne Barre, NMFS West Coast Region, (206) 526–4745; or Dwayne Meadows, NMFS Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2014, we received a petition from the Center for Biological Diversity requesting revision to the critical habitat designation for the Southern Resident killer whale DPS.

The ESA defines critical habitat under section 3(5)(A) as: ''(i) The specific areas within the geographical area currently occupied by the species, at the time it is listed . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Joint NMFS-Fish and Wildlife Service (FWS) regulations for designating critical habitat at 50 CFR 424.12(b) state that the agencies ''shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection'' (hereafter also referred to as ''Essential Features'' or ''Primary Constituent Elements'' (PCEs). Pursuant to these regulations, such features include: Space for individual and population growth, and normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. We are required to focus on the PCEs that best represent the principal biological or physical features of the habitat. PCEs may include: Nesting grounds, feeding sites, water quality, tide, and geological formation. Our implementing regulations (50 CFR 424.02) define ''special management considerations or protection'' as any method or procedure useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary of Commerce may exclude any particular area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

The ESA provides that NMFS may, from time-to-time, revise critical habitat as appropriate (section 4(a)(3)(A)(ii)). In accordance with section 4(b)(3)(D)(i) of the ESA, to the maximum extent practicable, within 90 days of receipt of a petition to revise critical habitat, the Secretary of Commerce is required to make a finding as to whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register**.

ESA implementing regulations issued jointly by NMFS and FWS (50 CFR 424.14(b)) define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition to revise critical habitat, the Secretary must consider whether the petition contains: (1) ''Information indicating that areas petitioned to be added to critical habitat contain physical or biological features essential to, and that may require special management to provide for, the conservation of the species involved''; or (2) ''information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species involved.''

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action may be warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that the petitioned action is warranted (See *Center for Biological Diversity* v. *Kempthorne,* 2007 WL 163244, at *4, *7 (N.D. Cal. Jan. 19, 2007)). At the 90-day stage, we evaluate the petitioner's request based upon the information in the petition, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us evaluate the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. If we find that a petition presents substantial information indicating that the revision may be warranted, within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register** (Section 4(b)(3)(D)(ii) of the ESA). Because the finding at the 12-month stage is based on a more thorough review of the available information, a ''may be warranted'' finding at the 90-day stage does not prejudge the outcome of our review.

Current Critical Habitat Designation

Following the ESA listing of the Southern Resident killer whale DPS (70 FR 69903; November 18, 2005), we initiated our effort to designate critical habitat for the Southern Resident killer whale DPS and finalized the designation in 2006 (71 FR 69054, November 29, 2006). Based on the natural history of the Southern Resident killer whales and their habitat needs, the physical or biological features necessary for conservation were identified as: (1) Water quality to support growth and development; (2) prey species of sufficient quantity, quality and availability to support individual growth, reproduction and development, as well as overall population growth; and (3) passage conditions to allow for migration, resting, and foraging. At that time, we noted that there were few data on Southern Resident killer whale distribution and habitat use of the coastal and offshore areas in the Pacific Ocean. Although we recognized that the whales occupy these waters for a portion of the year and considered them part of the geographical area occupied by the species, we declined to designate these areas as critical habitat because we found that the data informing whale distribution, behavior and habitat use was insufficient to define ''specific areas'' based upon defined physical and biological features (See Coastal and Offshore Areas section; 71 FR 69054; November 29, 2006). The final critical habitat designation identified three specific areas, within the area occupied, that contained the essential features listed above. The three specific areas designated as critical habitat were (1) the Summer Core Area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) the Strait of Juan de Fuca, which in total comprise approximately 2,560 square miles (6,630 sq km) of marine habitat. We determined that the economic benefits of exclusion of any of the areas did not outweigh the benefits of designation, and we therefore did not exclude any areas based on economic impacts. We considered the impacts to national security, and concluded the benefits of exclusion of 18 military sites, comprising approximately 112 square miles (291 sq km), outweighed the benefits of inclusion, because of national security impacts, and therefore, the sites were not included in the

designation. The critical habitat designation included waters deeper than 20 feet (6.1 m) relative to the extreme high water tidal datum. Although we did not include coastal and offshore areas based on the limited information on coastal habitat use and essential features in the offshore areas of the whales' range, we acknowledged that there was an active research program in place to gather information about movements and activities and noted that as we collected new information we hoped to fill data gaps about habitat features in the Pacific Ocean coastal and offshore areas to inform future considerations of critical habitat.

Analysis of Petition

As described above, the standard for determining whether a petition includes substantial information is whether the amount of information would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Based on the information presented and referenced in the petition, as well as all other information readily available in our files, we find the recent information on the whales' movements through their offshore habitat and discussion of sound as a feature of habitat meet this standard. The petition lists recent sources of information on the whales' habitat use along the West Coast of the United States, particularly from NMFS' Northwest Fisheries Science Center (NWFSC) programs. The petition also reviews natural history and threats to the whales. The Center for Biological Diversity proposes that the critical habitat designation be revised to include the Pacific Ocean region between Cape Flattery, WA and Point Reyes, CA, extending approximately 47 miles (76 km) offshore. The petition identifies that each of the three PCEs identified in the 2006 critical habitat designation (see Current Critical Habitat Section above) are also essential features in the whales' Pacific Ocean habitat. In addition, the petition asks us to adopt a fourth PCE for both existing and proposed critical habitat providing for in-water sound levels that: ''(1) Do not exceed thresholds that inhibit communication or foraging activities, (2) do not result in temporary or permanent hearing loss to whales, and (3) do not result in abandonment of critical habitat areas.''

As described in the critical habitat designation in November 2006, we have been directly engaged in research activities to fill data gaps about coastal habitat use. Collecting information to better understand coastal distribution was also identified as a top priority in developing a Research Plan and Recovery Plan for Southern Resident killer whales (NMFS, 2008). In 2011, NMFS completed a 5-year review of the status Southern Resident DPS under the ESA (NMFS, 2011). In the 5-year review, one of the recommendations for future actions was to increase knowledge of coastal distribution, habitat use and prey consumption to inform critical habitat designation. As identified in the petition, the NWFSC and our partners have used several techniques to collect information on coastal distribution and behavior, including land-based sightings, passive acoustic monitoring, coastal research cruises, and satellite tag studies. While data from these studies are available in our files and have begun to address data deficiencies identified in the 2006 critical habitat designation, there is considerable data analysis still needed to refine our understanding of the whales' habitat use and needs. While we have been actively working to gather and analyze data on coastal habitat use, we have not yet had sufficient information to propose revisions to critical habitat as requested in the petition. Additional data and analyses will contribute to identification of habitat features and areas in the Pacific Ocean that contain these features. In the petition, the Center for Biological Diversity recognized that NMFS is continuing to analyze data describing the Southern Residents' use of coastal and offshore waters and requested we refine the proposed revisions, as necessary, to include additional inhabited zones or to focus specifically on areas of concentrated use.

Additional information since the 2006 critical habitat designation is also provided in the petition regarding effects of anthropogenic sound on marine mammals. The petition references new information on killer whale responses to vessel noise (Erbe *et al.,* 2012; Holt, 2008; Holt *et al.,* 2009, Williams *et al.,* 2009; Williams *et al.,* 2014), as well as a review of the acoustic quality of habitats for whale populations, including killer whales (Williams *et al.,* 2013). This information may be relevant to consideration of sound as a new essential feature.

Petition Finding

Based on the information presented and referenced in the petition, as well as all other information readily available in our files, and pursuant to the criteria specified in 50 CFR 424.14(c), we find the recent information on the whales' movements through their offshore habitat and discussion of sound as a feature of habitat present substantial information indicating that revision of critical habitat may be warranted.

Information Solicited

To ensure that our review of Southern Resident killer whale critical habitat is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning: (1) The essential habitat needs and use of the whales, (2) the West Coast area proposed in the petition for inclusion, (3) the physical and biological features essential to the conservation of Southern Residents and that may require special management considerations or protection, (4) information regarding potential benefits or impacts of designating any particular area, including information on the types of Federal actions that may affect the area's physical and biological features, and (5) current or planned activities in the areas the petition requests to be added as critical habitat and costs of potential modifications to those activities due to critical habitat designation.

We request that all data and information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or on our Web page at: *http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/killer_whale/esa_status.html.*

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 21, 2014.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–09483 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130403320–4218–01]

RIN 0648–BD07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Regulatory Amendment 14 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 14), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this rule would revise the fishing years for greater amberjack and black sea bass, revise the commercial trip limits for gag grouper (gag) and black sea bass, and revise the recreational accountability measures (AMs) for black sea bass and vermilion snapper. The purpose of this rule is to help achieve optimum yield (OY) and enhance socio-economic opportunities within the snapper-grouper fishery in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before May 27, 2014.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2013–0052'' by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0052,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Nikhil Mehta, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the regulatory amendment, which includes an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2014/reg_am14/index.html.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to achieve on a continuing basis the OY from federally-managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the fishing years for greater amberjack and black sea bass, revise the commercial trip limits for gag and black sea bass, and revise the recreational AMs for black sea bass and vermilion snapper.

Greater Amberjack Fishing Year

This proposed rule would revise the greater amberjack fishing year of May 1 through April 30 to a fishing year of March 1 through the end of February. This fishing year change would allow the commercial sector access to greater amberjack during the Lenten season, when there is an increase in demand for the species, and thus enhance the economic yield from greater amberjack harvest.

Black Sea Bass Fishing Year

This proposed rule would revise the commercial and recreational fishing years for black sea bass from the current fishing years for both sectors of June 1 through May 31, to January 1 through December 31 for the commercial sector and April 1 through March 31 for the recreational sector. With the current commercial fishing year start date of June 1, the commercial season for black sea bass in 2010–2012 has closed by October as a result of the commercial quota being met. Therefore, commercial harvest of black sea bass with pots and hook-and-line gear has not extended into the winter months when conditions are more favorable for catching black sea bass, and the economic value of the species is greater. Furthermore, for the last several years commercial harvest of black sea bass has been closed when the commercial harvest of vermilion snapper opens on January 1. Vermilion snapper are often caught with black sea bass when commercial fishers use hook-and-line gear.

The commercial black sea bass pot component of the snapper-grouper fishery is closed from November 1 through April 30; however, the commercial hook-and-line sector can fish for black sea bass during that time period. Starting the commercial fishing year on January 1 during the black sea bass pot gear closure could provide, to the extent practicable, positive socio-economic benefits to the commercial black sea bass fishers who use hook-and-line gear because they would be able to fish for black sea bass when the catch per unit effort is higher, the fish are closer to shore, and there is generally a higher price per pound for black sea bass. The action would also align the beginning of the commercial harvest seasons for black sea bass and vermilion snapper, which are commonly caught together with hook-and-line gear, and would be expected to decrease the amount of regulatory discards in the snapper-grouper fishery. However, some bycatch could still occur if there was an in-season closure for either black sea bass or vermilion snapper. In addition, a change in the commercial fishing year to January 1 for the black sea bass commercial sector would allow commercial fishers to harvest black sea bass with hook-and-line gear during January to April when many other snapper-grouper species such as shallow-water groupers are closed to harvest.

Black sea bass and vermilion snapper are often caught together by recreational

fishermen using hook-and-line gear. The recreational black sea bass sector was closed in the fall of 2011 and 2012 because the recreational ACL was met. Furthermore, a November through March seasonal closure was in place for the vermilion snapper recreational sector. In 2013, Regulatory Amendment 18 to the FMP lifted the November–March seasonal closure for recreational harvest of vermilion snapper (78 FR 47574, August 6, 2013). Thus, with a June 1 start date for the black sea bass recreational fishing year, it is possible that the recreational black sea bass sector would be closed when recreational fishermen are targeting vermilion snapper, resulting in incidental catch of black sea bass. Beginning in April, weather conditions are often favorable throughout the Council's jurisdiction for recreational fishermen to target black sea bass. Therefore, a change in the black sea bass recreational fishing year start date from June 1 to April 1 would be expected to allow recreational fishermen throughout the Council's area of jurisdiction to have more opportunity to harvest black sea bass and vermilion snapper when harvest for both species is open, thus reducing regulatory discards of black sea bass during April and May. Revising the commercial and recreational fishing years for black sea bass could reduce bycatch, extend fishing opportunities for both the commercial and recreational sectors, and provide positive socio-economic benefits, to the extent practicable, to the snapper-grouper fishery and fishing community.

Black Sea Bass Commercial Trip Limit

Currently, the trip limit for the black sea bass commercial sector for hook-and-line gear and black sea bass pots is 1,000 lb (454 kg). This proposed rule would establish a trip limit of 300 lb (136 kg), gutted weight, for the hook-and-line component of the commercial sector from January 1 through April 30 when fishing with black sea bass pots is prohibited. The hook-and-line trip limit for the remainder of the fishing year would remain at 1,000 lb (454 kg), gutted weight, and from May 1 through October 31 the trip limit for fishers using black sea bass pots would continue to be 1,000 lb (454 kg), gutted weight. Black sea bass pots are prohibited from November 1 through April 30. Black sea bass and vermilion snapper are caught together with commercial hook-and-line gear, but are not generally caught together in black sea bass pots; bycatch is considered to be very low for this gear type. The fishing year for vermilion snapper begins on January 1, which would coincide with the proposed start date of the commercial fishing year for black sea bass. A 300 lb (136 kg), gutted weight, black sea bass trip limit for the hook-and-line sector during the period from January 1 to April 30 would allow fishermen to retain marketable quantities of black sea bass when targeting vermilion snapper; thereby, addressing bycatch and discard mortality issues. The 300-lb (136-kg) trip limit would also help to extend the length of the commercial vermilion snapper fishing season, since fishers would then have the opportunity to catch both black sea bass and vermilion snapper instead of just targeting vermilion snapper. The Council decided that a January 1 fishing year start date for the black sea bass commercial sector, in conjunction with a trip limit of 300 lb (136 kg), gutted weight, for the hook-and-line component would allow commercial harvest of black sea bass and vermilion snapper to occur at the same time and enhance the socio-economic benefits to those utilizing the black sea bass resource.

Gag Commercial Trip Limit

This proposed rule would revise the gag commercial trip limit from the current 1,000 lb (454 kg), gutted weight, to include a trip limit reduction from 1,000 lb (454 kg), gutted weight, to 500 lb (227 kg) gutted weight, when 75 percent of the gag commercial quota is reached. The Council determined that this trip limit alternative best addresses the need to minimize regulatory discards of gag and reduce adverse socio-economic impacts to fishermen and fishing communities that utilize the gag resource, while still allowing commercial harvest to continue. Without the trip limit reduction to 500 lb (227 kg) when 75 percent of the quota is reached, the gag commercial season would end earlier during the fishing year and thereby reduce the opportunity for a longer period of commercial harvest. Additionally, keeping the season open longer should help reduce the amount of regulatory discards of gag.

Black Sea Bass Recreational AMs

The black sea bass recreational AMs were established in the final rule for Amendment 17B to the FMP (75 FR 82280, December 30, 2010). Amendment 18A to the FMP subsequently revised the recreational AMs to close the recreational sector when the recreational annual catch limit (ACL) is projected to be met, regardless of the overfished status of black sea bass (77 FR 32408, June 1, 2012). Amendment 18A also established an annual catch target (ACT) for the black sea bass recreational sector. The ACT functions as a management reference point that is used to measure the efficiency of existing and new management measures for black sea bass.

The black sea bass stock in the South Atlantic was assessed through the Southeast Data, Assessment, and Review (SEDAR) stock assessment process in 2003 (SEDAR 2). SEDAR 2 determined that the South Atlantic black sea bass stock was overfished and undergoing overfishing. Measures to end overfishing were implemented and the Council developed a rebuilding plan for black sea bass with a 10-year rebuilding period that started in 2006. The black sea bass stock was reassessed in 2011 (SEDAR 25) and was determined to be no longer overfished or undergoing overfishing, but was not fully rebuilt. In 2013, the SEDAR 25 Update assessment indicated that the black sea bass stock was no longer undergoing overfishing and was fully rebuilt, and that harvest levels could be increased without jeopardizing the health of the population. In response to the SEDAR 25 Update assessment, Regulatory Amendment 19 to the FMP (78 FR 58249, September 23, 2013) more than doubled the recreational ACL and increased the ACT, and to date, the recreational sector has not harvested the ACL for the current fishing year. Additionally, the Council included a buffer between the acceptable biological catch and the ACL in Regulatory Amendment 19 as a conservative management approach to account for any management uncertainty.

As described in Regulatory Amendment 14, this proposed rule would revise the black sea bass recreational AMs while still managing the recreational sector to prevent the recreational ACL from being exceeded. The recreational AM would be to specify the length of the recreational fishing season for black sea bass, as determined by NMFS and announced annually in the **Federal Register**, prior to the proposed April 1 recreational fishing season start date. The fishing season would start on April 1 and end on the date NMFS would project the recreational sector's ACL would be met for that year. The purpose of this revised AM is to bring more predictability to the recreational season length, as requested by black sea bass recreational fishers. Prior to setting the length of the fishing season, NMFS would take into account the amount of black sea bass harvested in the previous fishing year and any biological consequences to the stock resulting from an overage. Thus, the following year's fishing season could be shorter if an ACL overage occurred in

the previous year. The defined season length would benefit recreational fishers by allowing them to better plan their activities with respect to fishing for black sea bass while still being sufficient to manage the stock and protect it from adverse biological consequences.

As described in the Magnuson-Stevens Act National Standard 1 Guidelines, AMs are management controls that prevent ACLs from being exceeded, correct or mitigate any ACL overages if they occur, and may include the closure of a fishery or a reduction of effort. In this case, with the recently increased ACLs, the revised AM of a defined season length would serve to constrain harvest at or below the ACL during a fishing year. The projections used to determine each year's season length would take into account any potential ACL overages from the prior fishing year and adjust the length of the season, consistent with National Standard 1.

In this proposed rule, NMFS specifically solicits public comment on this action to revise the black sea bass recreational AM.

Vermilion Snapper Recreational AMs

The vermilion snapper recreational AMs were established in Amendment 17B to the FMP (75 FR 82280, December 30, 2010). The current recreational AMs reduce the ACL in the year following a recreational ACL overage by the amount of the overage. However, if vermilion snapper are overfished and the recreational ACL is exceeded, the sector is closed and recreational harvest is prohibited. Since vermilion snapper are not classified as being overfished, there is no mechanism to reduce harvest when the vermilion snapper recreational ACL is met. Additionally, the November through March recreational seasonal closure for vermilion snapper was recently eliminated (78 FR 47574, August 6, 2013).

This proposed rule would revise the recreational AM for vermilion snapper by implementing an in-season closure and modifying the ACL overage adjustment (payback) in the event an overage of the recreational ACL occurs and vermilion snapper are overfished. If recreational landings reach or are projected to reach the recreational ACL, recreational harvest would be prohibited for the remainder of the fishing year. Payback of a recreational ACL overage in the following fishing year would occur if vermilion snapper are determined to be overfished and the total ACL (combined commercial and recreational ACLs) are exceeded. Unlike black sea bass, the Council determined these revised recreational AMs that include in-season closure authority would best meet the objectives of the FMP while ensuring that overfishing of vermilion snapper does not occur.

Other Action Contained in Regulatory Amendment 14

Regulatory Amendment 14 also contains an action to modify the vermilion snapper commercial fishing season. The commercial fishing season for vermilion snapper is currently split into two seasons, January 1 through June 30, and July 1 through December 31. The Council considered alternatives to modify the start of the second season to coincide with openings of other snapper-grouper species to extend fishing opportunities for vermilion snapper. However, at its September 2013 meeting the Council decided not to revise the vermilion snapper season through Regulatory Amendment 14 because there was little public support for restructuring the commercial seasons for vermilion snapper. The Council decided that the current vermilion snapper fishing season best addresses the need to coincide with the beginning of the harvest seasons for co-occurring snapper-grouper species to minimize regulatory discards, promote an equitable distribution of snapper-grouper resources to fishers throughout the Council's area of jurisdiction, and enhance socio-economic benefits to fishers and fishing communities that utilize the vermilion snapper resource.

Additional Measure in This Proposed Rule That Is Not Included in Regulatory Amendment 14

Regulatory Amendment 15 to the FMP revised the AMs for gag by removing the requirement that all other South Atlantic shallow-water grouper (SASWG) are prohibited from harvest when the gag commercial ACL is met or projected to be met (78 FR 49183, August 13, 2013). However, the final rule implementing Regulatory Amendment 15 inadvertently failed to remove regulatory language within the quota closure section for gag that also referred to the associated SASWG closure. Therefore, this proposed rule would remove the outdated language that is no longer applicable to the gag commercial ACL closure.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 14, the FMP, Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A copy of the full analysis is available from the NMFS (see **ADDRESSES**). A summary of the IRFA follows.

This proposed rule would modify the commercial and recreational fishing years for greater amberjack from May 1 through April 30 to March 1 through the last day of February; modify the recreational fishing year for black sea bass from June 1 through May 31 to April 1 through March 31; require as an AM for NMFS to annually announce the recreational fishing season end date for black sea bass based on NMFS projections of when the recreational ACL will be caught; change the start date of the commercial fishing year for black sea bass from June 1 to January 1, and from January through March, when sea bass pots are not allowed to be used, the hook-and-line trip limit would be revised to 300 lb (136 kg), gutted weight; reduce the commercial trip limit for gag from 1,000 lb (454 kg), gutted weight, to 500 lb (227 kg), gutted weight, when 75 percent of the commercial ACL is projected to be met; modify the AMs for recreationally caught vermilion snapper such that exceeding the recreational ACL will result in an in-season closure; require paybacks for the vermilion snapper recreational sector only if the vermilion snapper stock is overfished and if the total ACL (vermilion snapper commercial and recreational ACLs combined) are exceeded.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

NMFS expects the proposed rule to directly affect commercial fishermen and for-hire vessel operators in the South Atlantic snapper-grouper fishery. The Small Business Administration recently modified the small entity size

criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $19.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is $7.0 million (NAICS code 487210, recreational industries). The SBA periodically reviews and changes, as appropriate, these size criteria. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries, effective July 22, 2013 (78 FR 37398). That rule increased the size standard for commercial finfish harvesters from $4.0 million to $19.0 million. Neither that rule, nor other recent SBA rules, changed the size standard for for-hire vessels.

From 2008–2012, an annual average of 223 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.5 kg) of black sea bass. These vessels generated annual average dockside revenues of approximately $3.6 million (2011) from all species caught on the same trips as black sea bass, of which $918,000 (2011 dollars) were from black sea bass. Each vessel, therefore, generated an annual average of approximately $16,000 in gross revenues, of which $4,000 annually were from black sea bass. For the same period, an annual average of 252 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.5 kg) of gag. These vessels generated dockside revenues of approximately $5.7 million (2011) from all species caught on the same trips as gag, of which $1.7 million (2011 dollars) were from gag. Each vessel, therefore, generated an annual average of approximately $23,000 in gross revenues, of which $7,000 were from gag.

Additionally, an annual average of 304 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.5 kg) of greater amberjack. These vessels generated dockside revenues of approximately $5.7 million (2011) from all species caught on the same trips as greater amberjack, of which $905,000 (2011 dollars) were from greater amberjack. Each vessel, therefore, generated an annual average of approximately $23,000 in gross revenues, of which $3,000 were from greater amberjack. Also, an annual average of 229 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least l lb (0.5 kg) of vermilion snapper. These vessels generated dockside revenues of approximately $6.2 million (2011) from all species caught on the same trips as vermilion snapper, of which $2.9 million (2011 dollars) were from vermilion snapper. Each vessel, therefore, generated an annual average of approximately $27,000 in gross revenues, of which $13,000 were from vermilion snapper. Some vessels may have caught and landed any combination of these four species (black sea bass, gag, greater amberjack, and vermilion snapper) and revenues therefrom are included in the foregoing estimates. Vessels that caught and landed any of these four species may also operate in other fisheries, the revenues of which are not reflected in these totals. Based on revenue information, all commercial vessels affected by this rule can be considered small entities.

From 2008–2012, an annual average of 1,809 vessels had valid or renewable Federal permits to operate in the for-hire component of the recreational sector of the South Atlantic snapper-grouper fishery. As of July 24, 2013, 1,523 vessels held South Atlantic charter/headboat snapper-grouper permits and about 75 of those vessels are estimated to have operated as headboats in 2013. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) for charter boats are estimated to be $126,032 for Florida vessels, $53,443 for Georgia vessels, $100,823 for South Carolina vessels, and $101,959 for North Carolina vessels. For headboats, the corresponding estimates are $209,507 for Florida vessels and $153,848 for vessels in the other states. Revenue figures for states other than Florida are aggregated to avoid disclosure of confidential information. Based on these average revenue figures, all for-hire operations that would be affected by this rule can be considered small entities.

Because all entities expected to be affected by this proposed rule are small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Relative to the no action alternative, the proposed modification to the greater amberjack commercial season is not expected to alter the length of the commercial season. NMFS projections show that if closures were to occur, they would be of about the same length for both the no action alternative and the preferred alternative. For this reason, it is unlikely that total ex-vessel revenues for the commercial sector would change. However, there is a possibility that the distribution of those revenues would change in favor of those with first access to the fishery resource, particularly if fishing closures were to occur. NMFS projections for the recreational sector show that the recreational ACL would be met at a later date under the no action alternative than under the preferred alternative. Thus, greater recreational ACL overages may be expected from the preferred alternative as there is no in-season AM for the greater amberjack recreational sector. This would result in higher profits to for-hire vessels in a current fishing year. However, the post-season AM requires that the following year's fishing season would be shortened if the recreational ACL was exceeded during the previous fishing year, resulting in revenue and profit reductions to for-hire vessels. Based on average angler trips for 2008–2012, the for-hire fleet would lose about $161,000 (2011 dollars) in annual profits, of which $160,000 (2011 dollars) would be for headboats and $1,000 (2001 dollars) for charter boats as a result of a shortened season. It cannot be ascertained if a fishing year's increased profits that would be partly due to quota overages would more than compensate for the following year's profit reductions due to fewer trips taken because of a shortened fishing season.

The economic effects of the proposed modification to the recreational fishing year for black sea bass are uncertain. Projection models used to predict the length of the season provide relatively wide variations. Consequently, the expected effects on for-hire vessel profits would also vary widely. Based on 2008–2012 trip data, the proposed change in the recreational black sea bass fishing year is expected to change for-hire profits anywhere from negative $636,000 to positive $167,000 (2011 dollars), depending on the model used to project the season length.

Setting the end date for the black sea bass recreational fishing season at the beginning of each fishing year would in effect set a fixed recreational fishing season for that year. Relative to the no action alternative, this alternative is likely to provide an improved economic environment for increased short-term

profits for for-hire vessels, because for-hire vessel owners/operators could develop better plans (*e.g.,* booking schedules) to take advantage of improved fishing opportunities. One downside of this proposed action is that it tends to increase the likelihood of ACL overages because no fishing closure would be implemented during the fixed season. It cannot be determined at this time if a year's increased profits partly due to quota overages would more than compensate for the following year's profit reductions due to fewer trips taken because of a shortened fishing season.

Changing the commercial fishing year for black sea bass to start on January 1 would effectively mean that the hook-and-line component of the commercial sector would have first access to the black sea bass resource, because sea bass pots are prohibited from November 1 through April 30. In addition, the trip limit for the hook-and-line component of the commercial sector from January 1 through April 30 would be 300 lb (136 kg), gutted weight; in other months when commercial harvest of black sea bass is allowed, the trip limit for both the pot and hook-and-line components is maintained at 1,000 lb (454 kg), gutted weight. While the change in the commercial fishing year would benefit the hook-and-line component in that they could start fishing at the beginning of the fishing year, the lower trip limit would increase the cost per fish harvested for that gear type. It cannot be determined at this time whether this condition would increase the profits of hook-and-line vessels. Projections on the length of the commercial black sea bass fishing season show that, in general, fishery closures under the proposed fishing year change would happen earlier in the year than under the no action alternative. There is then a possibility that vessel revenues would be lower under the proposed fishing year change, and it is likely that the pot component of the commercial sector would bear a greater portion of the revenue loss because of a shorter fishing season than the hook-and-line component. The magnitude of such a loss cannot be estimated beyond stating that the revenues under the proposed action would be lower relative to that of the no action alternative.

Reducing the commercial trip limit for gag from 1,000 lb (454 kg), gutted weight, to 500 lb (227 kg), gutted weight, when 75 percent of the commercial ACL is projected to be met would extend the length of the commercial fishing season by about 1 week. It is not known if this lengthened season would be sufficient for the ex-vessel price for gag to increase. In the absence of an increased ex-vessel price, commercial revenues are unlikely to increase. Under this condition, there arises the possibility that profits per trip could decrease because the fishing cost per fish landed for those already catching above 500 lb (227 kg), gutted weight, would be higher. However, maintaining the trip limit at 1,000 lb (454 kg), gutted weight, could eventually lead to a progressive shortening of the commercial season over the years as fishermen race to harvest fish before the season closes. The reduced trip limit would likely favor those catching 300 lb (136 kg), gutted weight, or less, on commercial trips as they would be able to continue their usual fishing activities at relatively the same cost and profit per trip.

Modifying the recreational AM for vermilion snapper would require recreational ACL paybacks only if, in addition to the stock being overfished as in the no action alternative, the aggregate vermilion snapper commercial and recreational ACLs are exceeded. NMFS notes that the revised AM would also provide for in-season closures as in the no action alternative. Because vermilion snapper is currently neither overfished nor undergoing overfishing, the proposed revision to the recreational AM would have no short-term economic effects.

The following discussion analyzes the alternatives that were not selected as preferred by the Council, or alternatives for which the Council chose the no action alternative.

Three alternatives, including the preferred alternative, were considered for modifying the commercial and recreational fishing years for greater amberjack. The first alternative, the no action alternative, would maintain the May 1 through April 30 commercial and recreational fishing year. The second alternative would establish a January 1 through December 31 commercial and recreational fishing year for greater amberjack. The second alternative (January 1–December 31) would allow fishermen in South Florida to harvest greater amberjack in March through May before the fish migrate north in late spring. In effect, the first alternative (May 1–April 30) would allow South Florida fishermen to have access to the fish in only 2 months each year; whereas, fishermen in North Florida through North Carolina would have access to the fish for a much longer annual period. Thus, the Council rejected these two alternatives because the preferred alternative would allow fishermen across the South Atlantic states more equitable access to the fishery resource.

Five alternatives, including the preferred alternative, were considered for modifying the recreational fishing year for black sea bass. The first alternative, the no action alternative, would maintain the June 1 through May 31 recreational fishing year. The second alternative would establish a January 1 through December 31 fishing year; the third alternative, an October 1 through September 30 fishing year; and, the fourth alternative, a May 1 through April 30 fishing year. NMFS employed several models to project the season length for the various alternatives. Projected season lengths vary widely within and across the alternative fishing years and projection models. An attempt was made to estimate for-hire profits based on projected season lengths for the various fishing year alternatives. For some models, the preferred alternative would result in higher for-hire vessel profits than any other alternatives, but for other projection models, some alternatives (*e.g.,* no action alternative) would result in higher for-hire profits than the preferred alternative. In essence, profit estimates were quite uncertain. The Council rejected all of the other fishing year alternatives because they considered them inferior to the preferred alternative in reducing regulatory discards of black sea bass. The preferred recreational fishing year of April through March would reduce the amount of regulatory discards by coinciding the open seasons for species that are commonly caught together, such as black sea bass and vermilion snapper.

Four alternatives, including the preferred alternative, were considered for modifying the recreational AM for black sea bass. The first alternative, the no action alternative, would prohibit the harvest and retention of black sea bass if the recreational ACL is met or is projected to be met independent of the stock status, and would reduce the recreational ACL in the following fishing year by the amount of the recreational ACL overage in the prior year. The second alternative would require NMFS to annually announce the recreational fishing season end date, with the season starting on April 1 and the end date being determined by NMFS' projection of when the recreational annual catch target (ACT) would be met. The third alternative is the same as the first alternative but without the payback provision in the event of a recreational ACL overage. Comparative economic analysis of the various alternatives cannot be determined as a result of the interplay of such factors as an in-season AM that

affects overages, paybacks in case of overages, and a better business planning environment (*e.g.,* booking trips that would not be cancelled due to a quota closure) in a given year. The first alternative would provide a business planning environment that would not be as conducive to generating higher for-hire vessel profit as the preferred alternative, but would appear to have a better chance of limiting recreational ACL overages and thus avoid a shortening of the following year's fishing season that would have adverse effects on for-hire vessel profits. The second alternative would likely result in lower for-hire profits than the preferred alternative, because using the recreational ACT for determining the end date of the black sea bass recreational fishing season would result in a shorter fishing season in any given year. The third alternative would likely result in lower for-hire vessel profits than the preferred alternative in a given year, but in the event of overages, it would likely provide higher for-hire vessel profits in the following year because it would not require any payback for recreational ACL overages. The Council selected its preferred alternative because it would tend to provide more stability to the recreational sector and/or higher for-hire vessel profits than the other alternatives.

Four alternatives, including the preferred alternative, were considered for modifying the commercial fishing year for black sea bass. The first alternative, the no action alternative, would maintain the June 1 through May 31 fishing year, with pots prohibited from November 1 through April 30, and a 1,000 lb (454 kg), gutted weight, trip limit for both the pot and hook-and-line components. The second alternative would differ from the no action alternative by establishing a July 1 through June 30 commercial fishing year. The third alternative would differ from the no action alternative by setting a May 1 through April 30 fishing year. In addition, three sub-alternatives, including the preferred sub-alternative, were considered for a commercial trip limit for the hook-and-line component from January 1 through April 30 coinciding during a time that sea bass pots are prohibited from harvesting black sea bass. The first sub-alternative would impose a 100 lb (45 kg), gutted weight, hook-and-line trip limit and the second sub-alternative, a 200 lb (90 kg), gutted weight, hook-and-line trip limit. These two sub-alternatives would tend to increase the cost per landed fish more than the preferred sub-alternative. The Council rejected all the other fishing year alternatives because they were inferior to the preferred alternative in minimizing regulatory discards of black sea bass. The preferred alternative would minimize the amount of regulatory discards by allowing the harvest of black sea bass at the same time as that of co-occurring snapper-grouper species.

Two alternatives, including the preferred alternative, and five sub-alternatives, including the preferred sub-alternative, were considered for modifying the commercial trip limit for gag. The only other alternative, the no action alternative, would retain the 1,000 lb (454 kg), gutted weight, trip limit for gag throughout the fishing year. The other trip limits considered to be enacted when 75 percent of the gag commercial ACL is landed were the following: 100 lb (45 kg), gutted weight; 200 lb (90 kg), gutted weight; 300 lb (136 kg), gutted weight; and 400 lb (180 kg), gutted weight. Cost per landed fish would be lower under the no action alternative than under the preferred alternative, potentially resulting in higher vessel profit per trip. The Council rejected this alternative because it would lead to a shorter fishing season for gag and thus presents a higher potential to increase discards of gag when vessels fish for co-occurring snapper-grouper species. The other trip limits are lower than the preferred alternative so they would tend to increase the cost per landed fish and might lower vessel profit per trip.

Four alternatives, including the preferred alternative, were considered for modifying the recreational AM for vermilion snapper. The first alternative, the no action alternative, would prohibit the recreational harvest of vermilion snapper after recreational landings reach or are projected to reach the recreational ACL and vermilion snapper are overfished. In addition, this alternative would require a payback equal to the amount of the recreational ACL overage if recreational landings exceed the ACL, regardless of the status of the stock. The second alternative differs from the no action alternative only by not considering the status of the stock when imposing the in-season AM. The third alternative differs from the no action alternative by not considering stock status when imposing the in-season AM and removing the payback provision. Because vermilion snapper is no longer overfished, the various alternatives would have the same in-season economic effects. In the event of a recreational ACL overage, relative to the preferred alternative, the first and second alternatives would likely result in profit reductions because paybacks have to be made regardless of stock status; whereas, the third alternative would likely result in less adverse economic effects as it would not require any paybacks. While the recreational sector would be economically better off under the third alternative, the Council rejected this alternative because paybacks are deemed necessary to prevent overfishing of the vermilion stock.

The Council also considered three alternatives to modify the commercial fishing season for vermilion snapper, of which they chose the no action alternative. The no action alternative would maintain the split of the commercial fishing year, with January through June as the first season and July through December as the second season. The commercial ACL is currently split equally between the two seasons. The second alternative, with three sub-alternatives, would retain the split of the fishing year, with 100 percent of the new ACL implemented through Regulatory Amendment 18 to the FMP applied to the second season (78 FR 47574, August 6, 2013). The three sub-alternatives would change the start date of the second season to either July 1, June 1, or May 1. The third alternative, with three sub-alternatives, would retain the split of the fishing year, with 25 percent of the new ACL (Regulatory Amendment 18) applied to the first season and 75 percent to the second season. The three sub-alternatives would change the start date of the second season to either July 1, June 1, or May 1. The Council chose the no action alternative as their preferred alternative because they considered it as the best choice among the fishing year alternatives to minimize regulatory discards of vermilion snapper by those that fish for co-occurring snapper-grouper species.

An item contained in this proposed rule that is not part of Regulatory Amendment 14 is the removal of the requirement that all other SASWG are prohibited from harvest when the gag commercial ACL is met or projected to be met. This action was inadvertently left out of the final rule implementing Regulatory Amendment 15 to the FMP (78 FR 49183, August 13, 2013). The economic consequences of this action were previously analyzed in Regulatory Amendment 15.

List of Subjects in 50 CFR Part 622

Black sea bass, Fisheries, Fishing, Gag, Greater amberjack, South Atlantic, Snapper-Grouper, Vermilion snapper.

Dated: April 21, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.7, paragraphs (d) and (e) are revised to read as follows:

§ 622.7 Fishing years.

* * * * *

(d) *South Atlantic greater amberjack*—March 1 through the end of February.

(e) *South Atlantic black sea bass recreational sector*—April 1 through March 31. (Note: The fishing year for the commercial sector for black sea bass is January 1 through December 31).

■ 3. In § 622.190, paragraph (c)(1)(iii) is removed and paragraph (a)(5) is revised to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(5) *Black sea bass* (i) For the 2014, 2015, and 2016 fishing years—661,034 lb (299,840 kg), gutted weight; 780,020 lb (353,811 kg), round weight.

(ii) For the 2017 fishing year and subsequent fishing years—640,063 lb (290,328 kg), gutted weight; 755,274 lb (342,587 kg), round weight.

* * * * *

■ 4. In § 622.191, paragraphs (a)(7) and (a)(8) are revised to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(7) *Gag.* (i) Until 75 percent of the quota specified in § 622.190(a)(7) is reached—1,000 lb (454 kg), gutted weight, 1,180 lb (535 kg), round weight.

(ii) After 75 percent of the quota specified in § 622.190(a)(7) is reached or projected to be reached—500 lb (227 kg), gutted weight, 590 lb (268 kg), round weight. When the conditions in this paragraph (a)(7)(ii) have been met, the Assistant Administrator will implement this trip limit change by filing a notification with the Office of the Federal Register.

(iii) See § 622.190(c)(1) for the limitations regarding gag after the quota is reached.

(8) *Black sea bass.* (i) *Hook-and-line component.* (A) From January 1 through April 30, until the applicable quota specified in § 622.190(a)(5) is reached—300 lb (136 kg), gutted weight; 354 lb (161 kg), round weight.

(B) From May 1 through December 31, until the applicable quota specified in § 622.190(a)(5) is reached—1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight.

(ii) *Sea bass pot component.* From May 1 through October 31, until the applicable quota specified in § 622.190(a)(5) is reached—1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight. See § 622.183(b)(6) regarding the November 1 through April 30 seasonal closure of the commercial black sea bass pot component of the snapper-grouper fishery.

(iii) See § 622.190(c)(1) for the limitations regarding black sea bass after the applicable quota is reached.

* * * * *

■ 5. In § 622.193, paragraphs (e)(2) and (f)(2)(i) and (ii) are revised to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(2) *Recreational sector.* The recreational ACL for black sea bass is 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013–2014, 2014–2015, and 2015–2016 fishing years and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2016–2017 fishing year and subsequent fishing years. NMFS will project the length of the recreational fishing season based on when NMFS projects the recreational ACL specified in this paragraph is expected to be met and announce the recreational fishing season end date in the **Federal Register** prior to the start of the recreational fishing year on April 1. On and after the effective date of the recreational closure notification, the bag and possession limit for black sea bass in or from the South Atlantic EEZ is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

* * * * *

(f) * * *

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable recreational ACL specified in paragraph (f)(2)(iv) of this section the AA will file a notification with the Office of the Federal Register to close the recreational sector for vermilion snapper for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

(ii) If the combined vermilion snapper commercial and recreational landings exceed the combined vermilion snapper ACLs specified in paragraphs (f)(1) and (f)(2)(iv) of this section, and vermilion snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL for that following year by the amount of the recreational overage in the prior fishing year.

* * * * *

[FR Doc. 2014–09356 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 79, No. 80
Friday, April 25, 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

Lynn Canal-Icy Strait Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lynn Canal-Icy Strait Resource Advisory Committee (RAC) will meet in Juneau, Alaska. 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 Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review project proposals and update current RAC members with the status of approved projects from previous years.

DATES: The meeting will be held May 12, 2014 from 10:00 a.m. until 4:00 p.m.

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 Admiralty Island National Monument-Juneau Ranger District, Conference Room, 8510 Mendenhall Loop Road, Juneau, Alaska.

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 Admiralty Island National Monument Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jennifer Norton, RAC Coordinator, by phone at 907–789–6209 or via email at *jennifersnorton@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 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/Lynn+Canal-Icy+Strait+?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 April 30, 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 Jennifer Norton, RAC Coordinator, 8510 Mendenhall Loop Road, Juneau, Alaska 99801; or by email to *jennifersnorton@fs.fed.us,* or via facsimile to 907–586–8808.

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: April 17, 2014.

Chad VanOrmer,

Admiralty Island National Monument Ranger.

[FR Doc. 2014–09435 Filed 4–24–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue and Umpqua Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Rogue and Umpqua Resource Advisory Committee (RAC) will meet in Roseburg, Oregon. 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 Title II of the Act. The meetings are open to the public. The purpose of the meetings is orient the new RAC members to their responsibilities, review and vote on project recommendations for Title II funding, and monitor existing projects.

DATES: The meetings will be held on the following dates:

- May 16, 2014 at 9:30 a.m.
- June 12, 2014 at 9:30 a.m.
- June 13, 2014 at 9 a.m.
- July 19, 2014 at 10 a.m.

All RAC meetings are subject to cancellation. For status of meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meetings will be held at the Umpqua National Forest (NF) Supervisor's Office, Diamond Lake Conference Room, 2900 Northwest Stewart Parkway, Roseburg, Oregon.

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 Umpqua NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Cheryl Caplan, RAC Coordinator, by phone at 541–957–3270 or via email at *ccaplan@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 above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including meeting agendas and meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/B5767FD7F4B63B0988256CCC0064DED3?OpenDocument.* The meeting agenda for June 13, 2014 will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement during the meetings should request in writing by June 8, 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 Cheryl Caplan, RAC Coordinator, 2900 Northwest Stewart Parkway, Roesburg, Oregon, 97471; or by email to *ccaplan@fs.fed.us,* or via facsimile to 541–957–3495. *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: April 17, 2014.

Alice B. Carlton,

Umpqua Forest Supervisor.

[FR Doc. 2014–09403 Filed 4–24–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine-Angelina Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sabine-Angelina Resource Advisory Committee (RAC) will meet in Hemphill, Texas. 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 Title II of the Act. The meeting is open to the public. The purpose of the meeting is introduce the new Designated Federal Officer, discuss committee membership, view the ethics video, and present proposed projects.

DATES: The meeting will be held on Wednesday, June 4, 2014 at 4:30 p.m.

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 Sabine Ranger District, 5050 State Highway 21 East, Hemphill, Texas.

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 Sabine Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kimpton Cooper, Designated Federal Officer, by phone at 409–625–1940 or 936–897–1068; or via email at *kmcooper@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 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/Sabine-Angelina?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 May 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 Kimpton Cooper, Designated Federal Officer, Sabine-Angelina Resource Advisory Committee, 5050 State Highway 21 East, Hemphill, Texas 75948; or by email to *kmcooper@fs.fed.us* or via facsimile to 409–625–1953.

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: April 16, 2014.

Kimpton M. Cooper,

Sabine-Angelina Designated Federal Officer.

[FR Doc. 2014–09438 Filed 4–24–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Applications for Licensing as a Non-leveraged Rural Business Investment Company Under the Rural Business Investment Program

AGENCY: Rural Business-Cooperative Service, U.S. Department Agriculture (USDA).

ACTION: Notice.

SUMMARY: This Notice announces the acceptance of applications from newly-formed Rural Business Investment Companies (RBICs) who are interested in being licensed as non-leveraged RBICs under the Agency's Rural Business Investment Program (RBIP).

DATES: The Agency began accepting applications for non-leveraged status on August 6, 2012, and will accept applications for non-leveraged status on a continuous basis through July 29, 2016, or until such time the Agency determines otherwise.

Beginning fiscal year (FY) 2014, the Agency will limit its review during a fiscal year to those applications it has received as of July 29 of that year. A fiscal year is October 1 to September 30. Any application received after July 29 will be held for consideration in the following fiscal year. Unless otherwise identified by the Agency, the Agency will not consider any application submitted in response to this Notice that it receives after July 29, 2016.

ADDRESSES: *Address for Application Submission:* Completed applications must be sent to Specialty Programs Division, U.S. Department of Agriculture, Room Number 4204–S, 1400 Independence Avenue SW., Washington, DC 20250–3226.

Address for Requesting Information: Application materials and other information may be requested by writing to Claudette Fernandez, Director, Specialty Programs Division, U.S. Department of Agriculture, Room 4204–S, 1400 Independence Avenue SW., Washington, DC 20250–3226.

FOR FURTHER INFORMATION CONTACT: Detailed information on the RBIP, including application materials and instructions, can be found on the Agency's Web site at *http://www.rurdev.usda.gov/BCP_RBIP.html.* You also may request information from the Agency by contacting Claudette Fernandez, Director, Specialty Programs Division, U.S. Department of Agriculture, Room 4204–S, 1400 Independence Avenue SW., Washington, DC 20250–3226, at (202) 720–1400.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons'' (44 U.S.C. 3502(3)(A)). The collection requirement associated with this Notice is expected to receive less than ten respondents and therefore the Act does not apply.

Overview Information

Federal Agency Name. Rural Business-Cooperative Service.

Opportunity Title. Rural Business Investment Program for Non-leveraged RBICs.

Announcement Type. Subsequent announcement.

Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number for the program impacted by this action is 10.860, Rural Business Investment Program.

Dates. The Agency began accepting applications for non-leveraged status on August 6, 2012, and will continue to accept applications for non-leveraged status through at least July 29, 2016, or until such time the Agency determines otherwise. Beginning fiscal year (FY) 2014, the Agency will limit its review during a fiscal year to those applications it has received as of July 29 of that year. A fiscal year is October 1 to September 30. Any application received after July 29 will be held for consideration in the following fiscal year.

Availability of Notice. This Notice is available on the USDA Rural Development Web site at: *http://www.rurdev.usda.gov/BCP_RBIP.html.*

I. Opportunity Description

A. *Background.* The purpose of Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*) is to promote economic development and the creation of wealth and job opportunities in rural areas and among individuals living in those areas through venture capital investments by for-profit RBICs.

Prior to August 6, 2012, the Agency issued licenses to qualified RBICs as leveraged RBICs only. A notice published in the **Federal Register** on July 5, 2012, (77 FR 39675), informed the public that the Agency would begin accepting non-leveraged RBIC license applications on August 6, 2012. In the July 5, 2012, notice, the Agency indicated its intent to issue one non-leveraged license in FY 2012 and up to three licenses in FY 2013, depending on available resources.

The purpose of this current Notice is to notify interested RBICs that the Agency is still accepting applications from qualified RBICs for licensing as non-leveraged RBICs under the RBIP. The Agency will continue to accept such applications through July 29, 2016, or until such other time the Agency determines otherwise.

B. *Program Authority.* Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*) establishes the RBIP.

C. *Definition of Terms.* The terms defined in 7 CFR part 4290 are applicable to this Notice.

II. Licensing Information

A. *Number of Licenses.* The Agency intends to issue no more than five non-leveraged RBIC licenses through FY 2016, subject to sufficient resources. However, additional applications for licenses may be considered if sufficient resources are made available.

B. *Type of License.* Non-leveraged.

III. Eligibility Information

Applicants and their applications are subject to the provisions of this Notice and to the provisions of 7 CFR part 4290. In order to be eligible for non-leveraged status under this Notice, the applicant must demonstrate that one or more Farm Credit System (FCS) institution(s) will invest in the RBIC and, individually or collectively, hold 10 percent or more the applicant's total capital.

IV. Application and Submission Information

A. *Where to Obtain Applications.* Applicants may obtain applications and other applicable application material from the Agency's Specialty Programs Division, as provided in the **ADDRESSES** section of this Notice. Because applications will be selected on a first-come, first-served basis, the Agency recommends that potential applicants who plan to request application materials via mail request such materials as soon as possible.

Application materials may also be obtained via *http://www.rurdev.usda.gov/BCP_RBIP.html* or by contacting the Agency at the address and phone number provided in the **ADDRESSES** section of this Notice.

B. *Prior to Preparing Application.* The Agency recommends that those interested in applying for non-leveraged licensing contact the Agency at the address and phone number provided in the **ADDRESSES** section of this Notice to determine the status of the non-leveraged program in order to avoid unnecessary expenditure of resources by the applicant. As noted earlier in this Notice, the Agency intends to issue up to five non-leveraged licenses through FY 2016 and, due to limited resources, the Agency may not be able to review more than two applications in any 1 fiscal year.

C. *Content and Form of Submission.* Applications must be submitted in accordance with the application instructions contained in this Notice and in 7 CFR 4290. Applicants must submit complete initial applications in order to be considered. Applications must be submitted in hard copy form and on a USB flash drive; applications sent by facsimile will not be accepted.

Contents of the initial application include RD Form 4290–1, ''Rural Business Investment Program (RBIP) Application,'' Part I, Management Assessment Questionnaire (MAQ), and RD Form 4290–2, ''Rural Business Investment Program (RBIP) Application,'' Part II, Exhibits (exhibits A, D, E, F, G, K, L, P, V, and Z).

Submit two complete, original hard copy sets of the RD Form 4290–1 and RD Form 4290–2 (excluding Exhibit P, which is required in electronic form only). Place each of the two original sets in a large 3-ring binder. Label the binders with the RBIC's name. Submit one complete and unbound one-sided hard copy of the MAQ and Exhibits suitable for photocopying (i.e., no hole punches, staples, paper clips, tabs, or binders).

Applicants must enclose in their submission a nonrefundable licensing fee of $500 in the form of a check payable to USDA.

C. *When to Submit.* The Agency is accepting applications for non-leveraged status now through July 29, 2016, or until such time the Agency determines otherwise.

D. *Where to Submit.* The applicant must submit the application material to the Agency's Specialty Programs Division as specified in the **ADDRESSES** section of this Notice.

E. *How to Submit.* Applicants are encouraged to submit their applications via package/parcel service.

V. Program Provisions

This section of the Notice identifies the procedures the Agency will use to process and select applicants for licensing as a non-leveraged RBIC. More information about the RBIP is available in the regulation at 7 CFR part 4290.

The Agency will review each application it receives in response to this Notice with regard to eligibility and completeness. If the application is incomplete, the Agency will notify the applicant of the information that is missing. The applicant must then provide the missing information in order for the Agency to further review the application.

The Agency will select applicants for licensing as a non-leveraged RBIC on a first-come, first-served basis. The Agency will determine the order of applications based on the date the Agency receives a complete application. For example, if an application is received on July 1, but is incomplete, and the applicant supplies the Agency with the missing information on August 1, then that application will be considered for selection on the basis of the August 1 date— the date on which the application was complete. Therefore, the Agency encourages applicants to ensure their applications are complete prior to submitting them.

Only those applications that are eligible will be processed further for determining whether the applicant will be licensed as a non-leveraged RBIC. However, not all applications received in response to this Notice will receive this further processing. For each application that receives further processing, the Agency or its designee will focus its assessment of the application on the consistency of the newly formed RBIC's business plan with the goals of the RBIP program and on the applicant's management team's qualifications. Following this assessment, if the initial recommendation is favorable, the Agency or its designee will interview the applicant's management team.

Based on the assessment and interview, a preliminary determination will be made as to whether or not to select the applicant for non-leveraged status. If the preliminary determination is favorable, the Agency will send to the applicant a Letter of Conditions (also known as a ''Green Light'' letter) and the applicant will be invited to submit an updated RD Form 4290–1, Part I, Management Assessment Questionnaire, and RD Form 4290–2, Part II, Exhibits. Upon receipt of the Letter of Conditions, the applicant has 24 months to raise their private equity capital. Once a selected applicant has achieved full compliance with the regulations governing licensing as an RBIC, the Agency will issue the non-leveraged license to the RBIC.

VI. Administrative Information Applicable to This Notice

A. Notifications

(1) *Eligibility.* The Agency will notify the applicant in writing whether or not the application is determined to be eligible for participation in the RBIP. If an applicant is determined by the Agency to be ineligible, the Agency will provide the reason(s) the applicant was rejected. Such applicant will have review and appeal rights as specified in this Notice.

(2) *License.* Each applicant receiving a ''Green Light'' letter will be notified whether or not the RBIC will be licensed after the Agency's review of the updated RD Form 4290–1, Part I, Management Assessment Questionnaire, and RD Form 4290–2, Part II, Exhibits.

B. Administrative and National Policy Requirements

(1) *Review or Appeal Rights.* A person may seek a review of an adverse Agency decision under this Notice or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(2) *Notification of Unfavorable Decisions.* If at any time prior to license approval it is decided that favorable action will not be taken, the Agency will notify the applicant in writing of the decision and of the reasons why issuing a non-leveraged license was not favorably considered. The notification will inform the applicant of its rights to an informal review, mediation, and appeal of the decision in accordance with 7 CFR part 11.

VII. Agency Contacts

For further information about this Notice or for assistance with the program requirements, please contact the Specialty Programs Division, Room 4204–S, 1400 Independence Avenue SW., Washington, DC 20250–3226. Telephone: (202) 720–1400.

VIII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

If you wish to file a Civil Rights programs complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF) found online at *http://www.ascr.usda.gov/complain_filing_cust.html* or at any USDA Office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Ave. SW., Washington, DC 20250–9410, by fax (202) 690–7442, or email at *program.intake@usda.gov.employer.*

Individuals who are deaf, hard of hearing, or have speech disabilities and who wish to file either an EEO or program complaint, please contact USDA through the Federal Replay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.), please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: April 9, 2014.

Lillian E. Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2014–09333 Filed 4–24–14; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1935]

Reorganization of Foreign-Trade Zone 37 (Expansion of Service Area) Under Alternative Site Framework; Orange County, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR § 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the County of Orange, grantee of Foreign-Trade Zone 37, submitted an application to the Board (FTZ Docket B–14–2013, docketed 2–11–2013) for authority to expand the service area of the zone to include Rockland County, as described in the application, adjacent to the Newark/New York Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (78 FR 12033–12034, 2–21–2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 37 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 16th day of April 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2014–09481 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011–2012

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On October 3, 2013, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review and new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (the PRC).[1] The period of review (POR) for the administrative review is September 1, 2011, through August 31, 2012, and the POR for the new shipper review is September 1, 2011 through September 30, 2012. These reviews cover four producers/exporters of subject merchandise: Nanjing Gemsen International Co., Ltd. (Nanjing Gemsen), Xiping Opeck Food Co., Ltd. (Xiping Opeck), Yancheng Hi-King Agriculture Developing Co., Ltd. (Yancheng Hi-King), and Deyan Aquatic Products and Food Co., Ltd. (Deyan Aquatic, the new shipper). We invited parties to comment on the *Preliminary Results*. Based on our analysis of the comments received, we made a change to our margin calculations. However, for the final results, we continue to find that the companies covered by these reviews did not make sales of subject merchandise at less than normal value.

DATES: *Effective Date:* April 25, 2014.

FOR FURTHER INFORMATION CONTACT: Sandra Dreisonstok or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0768 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2013, the Department published the *Preliminary Results* of these reviews. On January 24, 2014, we issued a memorandum extending the time limit for the final results of these reviews to April 21, 2014.[2]

The Department gave interested parties an opportunity to comment on the *Preliminary Results.* We received a case brief from the petitioner, Crawfish Processors Alliance (CPA) on January 14, 2014, and rebuttal briefs from Xiping Opeck on January 21, 2014, and from Deyan Aquatic and Yancheng Hi-King on January 22, 2014.

We conducted these reviews in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the antidumping duty order is freshwater crawfish tail meat, which is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 1605.40.10.10, 1605.40.10.90, 0306.19.00.10, and 0306.29.00.00. On February 10, 2012, the Department added HTSUS classification number 0306.29.01.00 to the scope description pursuant to a request by U.S. Customs and Border Protection (CBP). The HTSUS numbers are provided for convenience and customs purposes only. The written description of the scope is dispositive. A full description of the scope of the order is contained in the Issues and Decision Memorandum,[3] which is hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the case briefs by parties to these reviews are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically

[1] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011–2012,* 78 FR 61331 (October 3, 2013) (*Preliminary Results*). Also, on February 12, 2013, in accordance with 19 CFR 351.214(j)(3), the Department aligned the new shipper review with the administrative review. *See* Memorandum to the File from Dustin Ross, Case Analyst, ''Alignment of New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China with the concurrent administrative review of Freshwater Crawfish Tail Meat from the People's Republic of China'' dated February 12, 2013.

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011–2012'' dated January 24, 2014.

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from James Maeder, Director, Office II, Antidumping and Countervailing Duty Operations, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance Web site at *http://enforcement.trade.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

For these final results, we continue to find that China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), and Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang), which have separate rates, had no shipments during the POR.[4] Consistent with the Department's refinement to its assessment practice in NME cases regarding no shipment claims, we are completing the administrative review with respect to China Kingdom, Shanghai Ocean Flavor, and Xuzhou Jinjiang, and will issue appropriate instructions to CBP based on the final results of the administrative review.[5]

Changes Since the Preliminary Results

Based on our analysis of comments received, we made a change to our calculations for these final results. Specifically, we altered our method of valuing crawfish shell from the *Preliminary Results*. For further details, *see* the company-specific analysis memoranda dated concurrently with this notice and the Issues and Decision Memorandum.

Final Results of the Review

For the final result of the administrative review, we determine that the following percentage weighted-average dumping margins exist for the period September 1, 2011, through August 31, 2012:

Company	Margin (percent)
Nanjing Gemsen International Co., Ltd	0.00
Xiping Opeck Food Co., Ltd	0.00
Yancheng Hi-King Agriculture Developing Co., Ltd[6]	0.00

For the result of the new shipper review, the Department determines that a dumping margin of 0.00 percent exists for merchandise produced and exported by Deyan Aquatic Products and Food Co., Ltd. covering the period September 1, 2011, through September 30, 2012.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews.[7] We intend to issue assessment instructions to CBP 15 days after the date of publication of these final results of reviews. For Nanjing Gemsen, Xiping Opeck, Yancheng Hi-King, and Deyan Aquatic we will instruct CBP to liquidate all entries during the respective PORs without regard to antidumping duties because their weighted-average dumping margins in these final results are zero.[8]

Pursuant to the Department's refinement to its assessment practice in NME cases,[9] for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be the rate established in the final results of the administrative review for each exporter as listed above, except if the rate is zero or *de minimis,* then no cash deposit will be required for that exporter; (2) for previously investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the investigation; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 223.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC entity that supplied that non-PRC exporter.

With respect to Deyan Aquatic, the respondent in the new shipper review, the Department established a combination cash deposit rate for this company consistent with its practice as follows: (1) For subject merchandise produced and exported by Deyan Aquatic, the cash deposit rate will be the rate established for Deyan Aquatic in the final results of the new shipper review; (2) for subject merchandise exported by Deyan Aquatic, but not produced by Deyan Aquatic, the cash deposit rate will be the rate for the PRC-wide entity; and (3) for subject merchandise produced by Deyan Aquatic but not exported by Deyan Aquatic, the cash deposit rate will be the rate applicable to the exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed regarding these final results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could

[4] *See Preliminary Results.*

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) and the ''Assessment Rates'' section below.

[6] For these final results, we continue to find that Yancheng Hi-King and its affiliates, Yancheng Seastar Seafood Co., Ltd., Wuhan Hi-King Agriculture Development Co., Ltd., Yancheng Hi-King Frozen Food Co., Ltd., Jiangxi Hi-King Poyang Lake Seafood Co., Ltd., and Yancheng Hi-King Aquatic Growing Co., Ltd., are a single entity for the purpose of calculating an antidumping duty margin. *See* Issues and Decision Memorandum.

[7] *See* 19 CFR 351.212(b)(1).

[8] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of reviews are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), 777(i) of the Act and 19 CFR 351.213(h), 351.214 and 351.221(b)(4).

Dated: April 21, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum:

A. Summary
B. Background
C. Surrogate Country
D. Affiliation
E. Separate Rates
F. Discussion of the Issue
  1. Selection of Surrogate Value for Crawfish Shell
G. Recommendation

[FR Doc. 2014–09479 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD263

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's (Council) Electronic Monitoring (EM) workgroup will meet in Anchorage, AK.

DATES: The meetings will be held May 15–16, 2014, from 1 p.m. to 5 p.m. on the 15th and 8:30 a.m. to 5 p.m. on the 16th.

ADDRESSES: The meetings will be held at the Clarion Suites, 1110 W. 8th Avenue, Heritage Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The workgroup will review study designs for the different research tracks going forward as part of the 2014–15 EM cooperative research program, and providing input on data protocols. The Workgroup will also review how the research will inform the Council's objectives for estimating catch and discards, and will identify a timeline, milestones, and decision points for integrating EM into the Observer Program.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*.

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 these meetings. 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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09428 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD255

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Council (Mid-Atlantic Council) will host a meeting of the Council Coordination Committee (CCC) consisting of the eight Regional Fishery Management Council (RFMC) chairs, vice chairs, and executive directors and its subcommittees in May 2014. The intent of this meeting is to discuss issues of relevance to the Councils, including: budget issues, MSA reauthorization, habitat issues, allocation working group report, bycatch and IUU certification, climate change, enforcement activities, Council Operational Guidelines, other topics of concern to the RFMC, and decisions and follow-up activities.

DATES: The meeting will be held May 12–15, 2014. Registration for the meeting will begin at 3 p.m. on Monday, May 12, 2014. The substantive meeting topics begin at 10 a.m. on Tuesday, May 13th and recess at 5:30 p.m. or when business is complete. The meeting will reconvene at 9 a.m. on Wednesday, May 14, 2014 and recess at 5 p.m. or when business is complete. The meeting will reconvene on the final day at 9 a.m. on Thursday, May 15, 2014 and adjourn by 1 p.m. or when business is complete.

ADDRESSES: The meeting will be held at the Hilton Virginia Beach Oceanfront, 3001 Atlantic Avenue, Virginia Beach, VA 23451; telephone: (757) 213–3000.

Council address: 800 North State Street, Suite 201, Dover, DE 19901–3910.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Moore, Executive Director; telephone: (302) 674–2331 or (877) 446–2362 toll free; or access the Mid-Atlantic Council Web site at *www.mafmc.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSA) of 2006 established the CCC by amending Section 302 (16 U.S.C. 1852) of the MSA. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the MSA or other Council members or staff. The Web site (found at *www.mafmc.org*) has materials relevant to the discussions at the CCC meeting.

On Monday, May 12—Registration begins.

On Tuesday, May 13—The meeting will begin with Welcome and Introductions. The discussion on

Council Reports will include current activities, future priorities, and additional NOAA resources and support required. There will be a discussion on NOAA Structure and Relationship to the Councils. The Budget for 2014 and 2015 will be discussed along with SK Funding. The Habitat discussion will include NMFS and Council activities, identifying habitat objectives, and linking habitat to fishery productivity.

On Wednesday, May 14—MSA Reauthorization will be discussed to include legislative updates and working group report, discussion, and actions. Allocation Working Group Report and Actions will be discussed. Bycatch will be discussed to include an Oceana report, NMFS position, and the Council and CCC response. The 2015 IUU Certification Report will be discussed to include the use of the new 2013 IUU definition. Climate Change and Fisheries will be discussed to include science, management, and governance. NOAA Recreational Summit—what's next, will be discussed.

On Thursday, May 15—NMFS OLE and USCG Enforcement Activities will be discussed by region for 2011, 2012, and 2013. The next steps for Operational Guidelines will be discussed. Science Issues will be discussed to include the National Science and Statistical Committee and stock Assessment prioritization. An Electronic Technologies Initiative Update will be discussed. Future CCC meeting will be discussed to include meeting dates and a February webinar. The meeting will close with any New Business, Additional Items, and Wrap Up

The timing and order in which agenda items are addressed may change as required to effectively address the issues. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders at (302) 526–5251 at least 5 days prior to the meeting date.

Dated: April 21, 2014.

William D. Chappell,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09371 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD246

Fisheries of the Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 35 pre-assessment webinar for Caribbean Red Hind.

SUMMARY: The SEDAR assessment of the Caribbean Red Hind will consist of several workshops and a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 35 pre-assessment webinar will be held on Thursday, May 15, 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** below) 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 webinar are as follows:

Participants will discuss and review data analyses and decisions since the Data Workshop.

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: April 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09426 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD253

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) ad hoc Lower Columbia River Natural Coho Workgroup (LRC Workgroup) will hold a public work session in Portland, OR. The meeting is open to the public, but is not intended as a public hearing. Public comments will be taken at the discretion of the LRC Workgroup chair as time allows.

DATES: The work session will begin at 9 a.m. on Thursday, May 15, 2014 and will proceed until 5 p.m. or until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific Council office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, telephone: (503) 820–2414.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to discuss and develop recommendations on the status of Lower Columbia River coho stocks, alternative harvest policies, risk assessment methods and criteria, and to draft a report on coho populations in the upper Willamette River. The reports and recommendations developed by the LRC Workgroup will be presented to the Pacific Council, its advisory bodies, and the public at the June 2014 Pacific Council meeting in Garden Grove, CA. The LRC Workgroup may also discuss and consider recommendations to the Pacific Council regarding items of interest on the Pacific Council's June 2014 meeting agenda.

Although non-emergency issues not contained in the LRC Workgroup meeting agendas may come before the LRC Workgroup for discussion, those issues may not be the subject of formal LRC Workgroup action during this meeting. LRC Workgroup action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the LRC Workgroup's intent to take final action to address the emergency.

Special Accommodations

This public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09427 Filed 4–24–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product previously furnished by such agency.

Comments Must Be Received on or Before: 5/26/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7350–00–290–0586—Cup, Disposable, Paper, Hot Food, 16 oz, White
NSN: 7350–00–926–9233—Plate, Paper, Disposable, 3-Compartmented Tray, Rectangular, White, 8″ × 10″
NPA: The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FORT WORTH, TX
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.
NSN: MR 592—Pad, Cleaning, Sponge and Eraser, 2PK
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Contracting Activity: DEFENSE COMMISSARY AGENCY, FORT LEE, VA
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Type/Location: Janitorial Service, US Coast Guard, Air Station Atlantic City, William J. Hughes Federal Aviation Administration Technical Center, Atlantic City International Airport, FAA Technical Center, Building 350, Egg Harbor Township, NJ.
NPA: Fedcap Rehabilitation Services, Inc., New York, NY.
Contracting Activity: DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD, BASE PORTSMOUTH, PORTSMOUTH, VA.
Service Type/Location: Healthcare Housekeeping and Related Service, U.S. Army Medical Command, Madigan Army Medical Center and affiliated Medical Treatment Facilities, Joint Base Lewis-McChord, WA, 2199 Storage Street, Suite 68, Fort Sam Houston, TX.
NPA: HHI Services Inc., San Antonio, TX.
Contracting Activity: DEPT OF THE ARMY, W40M USA MEDCOM HCAA, FORT SAM HOUSTON, TX.

Deletion

The following product is proposed for deletion from the Procurement List:

Product

Strap, Webbing

NSN: 5340–00–235–4434
NPA: Huntsville Rehabilitation Foundation, Huntsville, AL
Contracting Activity: DEFENSE LOGISTICS AGENCY TROOP SUPPORT,

PHILADELPHIA, PA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–09404 Filed 4–24–14; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletion from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities, and delete a service from the Procurement List previously provided by such agency.

DATES: Effective Date: May 26, 2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On 2/28/2014 (79 FR 11422–11423), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Janitorial Service, FAA SW Region, Houston TRACON, 4005 Greens Road, Houston, TX

NPA: Crossroads Diversified Service, Inc., Sacramento, CA

Contracting Activity: DEPT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, FORT WORTH, TX

Deletion

On 4/4/2014 (79 FR 18891–18892), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Switchboard Operation, Veterans Affairs Medical Center: Highway 6 West, 1400 E. Touhy Avenue, Iowa City, IA

Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, NAC, HINES, IL

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–09405 Filed 4–24–14; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps Competitive Advantage study for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Adrienne DiTommaso, at 202–606–3611 or email to *aditommaso@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on 1/21/14. This comment period ended 3/24/14. There were 2 comments submitted. Those comments involved suggestions around the hiring scenario set up; candidate experience profiles; and the brand identity of members. Clarifying information was provided to the commenters to further explain the use of a bachelor's degree as the common level of education across candidates, and the use of a highly generalized office position as the hypothetical position of interest. A technical question about the possible incompatibility of certain combinations of candidate experiences was answered through an example. Finally, the suggestion that we test AmeriCorps brand salience vs. grantee brand salience was addressed by explaining the lack of sufficient space in the experimental design, as well as concerns of confusing and overburdening respondents with too much information.

Description: CNCS is seeking approval of the AmeriCorps Competitive Advantage study, which is used by staff in the Office of Research and Evaluation to identify any competitive advantage in the job market that may be conferred by AmeriCorps experience.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Competitive Advantage Study.

OMB Number: None.

Agency Number: None.

Affected Public: Employees involved in the hiring process in public, non-profit, and private sectors.

Total Respondents: Approximately 500.

Frequency: One time.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 125.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 21, 2014.

Mary Hyde,

Acting Director, Office of Research and Evaluation.

[FR Doc. 2014–09388 Filed 4–24–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Response Systems to Adult Sexual Assault Crimes Panel; Charter Amendment

AGENCY: DoD.

ACTION: Charter amendment.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the Response Systems to Adult Sexual Assault Crimes Panel (''the Panel'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the DoD, 703–692–5952.

SUPPLEMENTARY INFORMATION: This Panel's charter is being amended under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (''the Sunshine Act''), and 41 CFR 102–3.50(d).

The Panel is a discretionary Federal advisory committee that shall provide the Committees on the Armed Services of the Senate and the House of Representatives, through the General Counsel of the DoD and the Secretary of Defense, a report of its findings and recommendations. The Panel will conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses, under 10 U.S.C. 920 (Article 120, Uniform Code of Military Justice (UCMJ)), for the purpose of developing recommendations regarding how to improve the effectiveness of such systems. Additionally, Section 1731(a) of the National Defense Authorization Act for Fiscal Year 2014 (''the FY 2014 NDAA'') (Pub. L. 113–66) established additional tasks.

Pursuant to Section 576(b)(1)(A) of the FY 2013 NDAA, the Panel shall be comprised of nine members, five of whom are appointed by the Secretary of Defense and one member each appointed by the Chairmen and Ranking Members of the Committees on Armed Services of the Senate and the House of Representatives, respectively.

The members shall be selected from among private United States citizens, who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in Federal and State criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. The chair shall be appointed by the Secretary of Defense from among the members of the Panel. Members shall be appointed for the life of the Panel. Any vacancy in the Panel shall be filled in the same manner as the original appointment. Members of the Panel, who were appointed by the Secretary of Defense, shall be appointed as experts or consultants, under the authority of 5 U.S.C. 3109, to serve as special government employee (SGE) members.

Panel members shall, with the exception of travel and per diem for official travel, serve without compensation, unless authorized by the Secretary of Defense.

Each Panel member is appointed to provide advice to the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary and consistent with the Panel's mission, may establish subcommittees, task forces, and working groups. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Office of the General Counsel of the DoD.

These subcommittees shall not work independently of the Panel and shall report all of their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Panel. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Panel directly to the DoD or any Federal officer or employee.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Panel. Such individuals, if not full-time or part-time government personnel, shall be appointed as experts or consultants, under the authority of 5 U.S.C. 3109, to serve as SGE members. Subcommittee members shall serve for

the life of the subcommittee. With the exception of travel and per diem for official travel related to the Panel or its subcommittees, subcommittee members shall serve without compensation.

All subcommittees operate pursuant to the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures. The Panel's Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD employee and shall be appointed in accordance with established DoD policies and procedures.

The Panel's DFO is required to be in attendance at all meetings of the Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Panel's DFO, a properly approved Alternate DFO, duly appointed to the Panel according to established DoD policies and procedures, shall attend the entire duration of all meetings of the Panel and its subcommittees.

The DFO, or the alternate DFO, shall call all of the Panel's and its subcommittee's meetings; prepare and approve all meeting agendas; and adjourn any meeting, when the DFO, or the alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures; and chair meetings when directed to do so by the official to whom the Panel reports.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Panel.

All written statements shall be submitted to the DFO for the Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Panel DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Panel. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–09408 Filed 4–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reestablishment of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Reestablishment of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is reestablishing the charter for the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being reestablished under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (''the Sunshine Act''), and 41 CFR 102–3.50(d).

The Board is a discretionary Federal advisory committee and shall provide independent advice to the Secretary of Defense through the Secretary of the Navy and other Navy Component Heads as determined by the Secretary of the Navy on matters relating to the Naval Postgraduate School and the Naval War College. These matters included, but are not limited to, organizational management, curricula and methods of instructions, facilities, and other matters of interest.

The Board shall report to the Secretary of the Navy, through the Chief of Naval Operations and the Presidents of the Naval Postgraduate School and the Naval War College. The Secretary of the Navy may act upon the Board's advice and recommendations.

The DoD, through the Office of the Secretary of the Navy and the Naval Postgraduate School and the Naval War College, shall provide support services as deemed necessary for the Board's performance, and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) (''the Sunshine Act''), governing Federal statutes and regulations, and established DoD policies and procedures.

The Board shall be comprised of no more than 10 members, who are eminent authorities in the fields of academia, business, national defense and security, the defense industry, and research and analysis. Not less than 50 percent of Board members shall be eminent authorities in the field of academia. Board members shall be appointed by the Secretary of Defense, with annual renewals.

The Secretary of the Navy may select and appoint the Chair of the Board from members previously approved by the Secretary of Defense to serve on the Board. The Chief of Naval Personnel/Deputy Chief of Naval Operations for Manpower, Personnel, Training and Education and the Commanding General, Training and Education Command, United States Marine Corps shall serve as ex-officio members of the Board. Ex-officio members shall have voting rights and count toward the Board's total membership.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 to serve as special government employee (SGE) members. Those individuals who are full-time, or permanent part-time, Federal employees will be appointed as regular government employee (RGE) members.

The Secretary of Defense may approve the appointment of Board members for one to four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service.

Regardless of the individual's approved term of service, all appointments to the Board shall be renewed on an annual basis. In addition, they shall serve without compensation, except for reimbursement for official travel and per diem.

Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups deemed necessary to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of the Navy.

The Board shall establish two permanent subcommittees:

a. The Naval Postgraduate School Subcommittee shall be comprised of no more than 15 members and shall focus on the Naval Postgraduate School. The Chief of Naval Personnel/Deputy Chief of Naval Operations for Manpower,

Personnel, Training and Education Command; the Commanding General USMC Training and Education Command; the Commandant Army War College; the Chief of Naval Research; and the Commander and President of the Air University, shall serve as ex-officio members of the subcommittee with voting rights and counting towards the subcommittee's total membership. The subcommittee shall meet a minimum of two times annually.

b. The Naval War College Subcommittee shall be comprised of no more than 10 members and shall focus on the Naval War College. The Chief of Naval Personnel/Deputy Chief of Naval Operations for Manpower, Personnel, Training and Education shall serve as an ex-officio member of the subcommittee with voting rights and counting towards the subcommittee's total membership. The subcommittee shall meet a minimum of two times annually.

These subcommittees shall not work independently of the chartered Board, and shall report all of their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittees or any of its members update or report directly to the Department of Defense or any Federal officers or employees.

Such subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or permanent part-time government employees, shall be appointed in the same manner as the Board members. Such individuals shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. Those individuals who are full-time, or permanent part-time, Federal employees will be appointed as regular government employee (RGE) members. With the exception of reimbursement for official travel and per diem, subcommittee members shall serve without compensation.

The Secretary of the Navy may select and appoint the chair of both the Naval Postgraduate School Subcommittee to the Board and the Naval War College Subcommittee of the Board from subcommittee members previously approved by the Secretary of Defense to serve on the subcommittee in question.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies and procedures.

The Board's Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

The Board's DFO is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Board's DFO, an Alternate DFO, duly appointed to the Board according to DoD policies and procedures, shall attend the entire duration of the Board or subcommittee meetings.

The DFO, or the Alternate DFO, shall call all of the Board's and subcommittees' meetings; prepare and approve all meeting agendas; and adjourn any meeting, when the DFO or Alternate DFO, determines adjournment to be in the public's interest or required by governing regulations or DoD policies/procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Board of Advisors to the Presidents of the Naval Postgraduate School and Naval War College membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Board of Advisors to the Presidents of the Naval Postgraduate School and Naval War College. All written statements shall be submitted to the DFO for the Board of Advisors to the Presidents of the Naval Postgraduate School and Naval War College, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Advisors to the Presidents of the Naval Postgraduate School and Naval War College DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/*. The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Advisors to the Presidents of the Naval Postgraduate School and Naval War College. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 21, 2014.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2014–09377 Filed 4–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is renewing the charter for the Ocean Research Advisory Panel (''the Panel'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (''the Sunshine Act''), and 41 CFR 102–3.50(d).

The Panel is a nondiscretionary Federal advisory committee that shall provide independent scientific advice and recommendations to the National Ocean Research Leadership Council (''the Council''). The Council operates as the National Ocean Council (NOC) as directed by Executive Order 13547. The NOC Deputy-level Committee (''the Committee'') has assumed the statutory responsibilities of the Council. The Panel shall:

a. Provide advice on policies and procedures to implement the National Oceanographic Partnership Program.

b. Provide advice on selection of partnership projects and allocation of funds for partnership projects for implementation under the program.

c. Provide advice on matters relating to national oceanographic data requirements.

d. Fulfill any additional responsibilities that the Committee considers appropriate.

Pursuant to 10 U.S.C. 7903(b), the Panel shall report to the Committee.

The Department of Defense (DoD), through the Secretary of the Navy and

the Office of Naval Research, shall provide support as deemed necessary for the Panel's performance and functions and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) (''the Sunshine Act''), governing Federal statutes and regulations, and established DoD policies and procedures.

Pursuant to 10 U.S.C. 7903(a), the Panel shall consist of not less than 10 and not more than 18 members, representing the following:

a. One member who will represent the National Academy of Sciences.

b. One member who will represent the National Academy of Engineering.

c. One member who will represent the Institute of Medicine.

d. Members selected from among individuals who will represent the views on ocean industries, State Governments, academia, and such other views as the Chairs of the Committee consider appropriate.

e. Members selected from individuals who are eminent in the fields of marine science, marine policy, or related fields.

Panel members shall be appointed by the Chairs of the Committee and approved by the Secretary of Defense or the Deputy Secretary of Defense. These appointments shall be renewed on an annual basis.

Panel members who are not full-time or permanent part-time Federal officers or employees, shall be appointed to serve as experts and consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee (SGE) members. Those individuals who are full-time or permanent part-time Federal officers or employees shall be appointed as regular government employee (RGE) members. With the exception of reimbursement for official Panel-related travel and per diem, Panel members shall serve without compensation.

The Secretary of Defense or the Deputy Secretary of Defense shall approve the appointment of Panel members for a term of service of one-to-four years; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees. Each Panel member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Secretary of Defense or the Deputy Secretary of Defense shall select the Chair and the Vice Chair of the Panel for a term of service of one-to-four years from among the Panel's approved membership; such appointment shall not extend past the members approved term of service. In addition, the Secretary of Defense or the Deputy Secretary of Defense may invite other distinguished government officers to serve as non-voting observers of the Panel, and appoint non-voting consultants, with special expertise, to assist the Panel on an ad hoc basis. These non-voting observers and those non-voting experts and consultants appointed by the Secretary of Defense or the Deputy Secretary of Defense shall not count toward the Panel's total membership. The Department, when necessary, and consistent with the Panel's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups as deemed necessary to support the Panel. Establishment of subcommittees will be based upon written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of the Navy, as the DoD Sponsor.

Such subcommittees shall not work independently of the Panel, and shall report all their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees have no authority to make recommendations and decisions, verbally or in writing, on behalf of the Panel; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees.

The Secretary of Defense or the Deputy Secretary of Defense shall appoint subcommittee members even if the individual is already a Panel member. Subcommittee members, with the approval of the Secretary of Defense or the Deputy Secretary of Defense, may serve a term of service on the subcommittee of one-to-four years; however, no member shall serve more than two consecutive terms of service on the subcommittee without approval by the Secretary of Defense or the Deputy Secretary of Defense.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants, pursuant to 5 U.S.C. 3109, to serve as SGE members, whose appointments must be renewed by the Secretary of Defense, on an annual basis. Those individuals who are full-time or permanent part-time Federal officers or employees shall serve as RGE members, subject to annual renewals. With the exception of reimbursement for official Panel-related travel and per diem, subcommittee members shall serve without compensation. All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies and procedures.

The Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

In addition, the DFO is required to be in attendance at all meetings of the Panel and any subcommittees, for the entire duration of each and every meeting; however, in the absence of the DFO, a properly approved Alternate DFO, duly appointed to the Panel according to established DoD policies and procedures, shall attend the entire duration of all meetings of the Panel or its subcommittees.

The DFO or the Alternate DFO, shall call all meetings of the Panel and its subcommittees; prepare and approve all meeting agendas; and adjourn any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Ocean Research Advisory Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Ocean Research Advisory Panel.

All written statements shall be submitted to the DFO for the Ocean Research Advisory Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Ocean Research Advisory Panel DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Ocean Research Advisory Panel. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–09401 Filed 4–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of an Open Meeting of the National Defense University Board of Visitors (BOV)

AGENCY: National Defense University, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Defense University Board of Visitors (BOV) will take place. This meeting will be open to the public.

DATES: The meeting will be held on Tuesday, May 20, 2014 from 12:00 p.m. to 5:00 p.m. and will continue on Wednesday, May 21, 2014, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The Board of Visitors meeting will be held at Lincoln Hall, Building 64, Room 1105, the National Defense University, 300 5th Avenue SW., Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice of open meeting is Ms. Joycelyn Stevens at (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. The future agenda will include discussion on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the National Defense University. Limited space made available for observers will be allocated on a first come, first served basis. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to the point of contact person listed in **FOR FURTHER INFORMATION CONTACT**. (Subject Line: Comment/Statement to the NDU BOV.)

Dated: April 21, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–09378 Filed 4–24–14; 8:45 a.m.]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID: DoD–2014–OS–0055]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a System of Records Notice.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The notice is DGC 05, Administrative Files on Active Psychiatric Consultants to Department of Defense (August 27, 1993, 58 FR 45320).

DATES: Comments will be accepted on or before May 27, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, 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: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/*.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

DGC 05

Administrative Files on Active Psychiatric Consultants to Department of Defense (August 27, 1993, 58 FR 45320).

Reason: Based on a recent review of DGC 05, Administrative Files on Active Psychiatric Consultants to Department of Defense, it was determined that this system of records is no longer needed. The retention and disposal period is past and all records have been destroyed, therefore the system can be deleted.

[FR Doc. 2014–09411 Filed 4–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Final Environmental Impact Statement for the Moffat Collection System Project, Denver County, Adams County, Boulder County, Jefferson County, Grand County, Summit County, Gilpin County, and Park County, CO

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Omaha District has prepared a Final Environmental Impact Statement (EIS) to analyze the direct, indirect, and cumulative effects of a water supply project called the Moffat Collection System Project (Moffat Project or Project) in Denver County, Adams County, Boulder County, Jefferson County, Grand County, Summit County, Gilpin County, and Park County, CO. The purpose of the Moffat Project is to develop 18,000 acre-feet (AF) per year of new, firm yield to the Moffat Water Treatment Plant (WTP) and raw water customers upstream of the Moffat WTP pursuant to the Board of Water Commissioners' commitment to its customers. Denver Water's need

for the proposed Moffat Project is to address two major issues: (1) Timeliness—the overall near-term water supply shortage, and (2) location—the imbalance in water storage and supply between the North and South systems. The Moffat Project would result in direct impacts to jurisdictional waters of the United States (U.S.), including wetlands. The placement of fill material in these waters of the U.S. for the construction of water storage and distribution facilities associated with developing additional water supplies requires authorization from the Corps under Section 404 of the Clean Water Act. The City and County of Denver is the Permittee and Applicant, acting by and through its Board of Water Commissioners (Denver Water).

The Final EIS was prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Corps' regulations for NEPA implementation (33 Code of Federal Regulations [CFR] parts 230 and 325, Appendices B and C). The Corps, Omaha District, Denver Regulatory Office is the lead federal agency responsible for the Final EIS and information contained in the Final EIS serves as the basis for a decision regarding issuance of a Section 404 Permit. The Final EIS also provides information for local and state agencies having jurisdictional responsibility for affected resources.

DATES: Written comments on the Final EIS will be accepted on or before June 9, 2014.

ADDRESSES: Send written comments regarding the Proposed Action and Final EIS to Rena Brand, Moffat EIS Project Manager, U.S. Army Corps of Engineers, Omaha District, Denver Regulatory Office, 9307 South Wadsworth Boulevard, Littleton, CO 80128, or via email to *moffat.eis@usace.army.mil.* Requests to be placed on or be removed from the Project mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Rena Brand, Moffat EIS Project Manager, via phone at 303–979–4120, fax at 303–979–0602, or email at *moffat.eis@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The purpose of the Final EIS is to provide decision-makers and the public with information pertaining to the Proposed Action and alternatives, and to disclose environmental impacts and identify mitigation measures to reduce impacts. Denver Water proposes to enlarge its existing 41,811–AF Gross Dam and Reservoir by 72,000 AF to a total storage capacity of 113,811 AF. Gross Dam and Reservoir is located in Boulder County, CO, approximately 35 miles northwest of Denver and 6 miles southwest of the City of Boulder. The enlargement would be accomplished by raising the existing concrete gravity arch dam by 125 feet, from 340 to 465 feet high. The surface area of the reservoir would be expanded from approximately 418 to 818 acres. Denver Water is proposing to raise the dam an additional 6 feet to a total height of 471 feet with a surface area of 842 acres to create 5,000 AF of additional storage for environmental mitigation (''Environmental Pool''). The additional storage would be filled with water provided by the cities of Boulder and Lafayette. Using existing collection infrastructure, water from the Fraser River, Williams Fork River, and South Boulder Creek would be diverted and delivered during average to wet years via the Moffat Tunnel and South Boulder Creek to Gross Reservoir. There would be no additional diversions in dry years because Denver Water already diverts the maximum amount physically and legally available under its existing water rights. In order to firm this water supply and provide 18,000 AF per year of new firm yield, an additional 72,000 AF of storage capacity is necessary. To meet future demands, in most years, Denver Water would continue to rely on supplies from its North and South collection systems. In a drought or emergency, Denver Water would rely on the additional water it would have previously stored in the Moffat Collection System to provide the additional 18,000 AF of yield.

In addition to the Proposed Action (Alternative 1a)—Gross Reservoir Expansion (Additional 77,000 AF with the Environmental Pool for Mitigation), the Final EIS analyzed five additional alternatives: (1) Alternative 1c—Gross Reservoir Expansion (Additional 40,700 AF)/New Leyden Gulch Reservoir (31,300 AF); (2) Alternative 8a—Gross Reservoir Expansion (Additional 52,000 AF)/Reusable Return Flows/Gravel Pit Storage (5,000 AF); (3) Alternative 10a—Gross Reservoir Expansion (Additional 52,000 AF)/Reusable Return Flows/Denver Basin Aquifer Storage (20,000 AF); (4) Alternative 13a—Gross Reservoir Expansion (Additional 60,000 AF)/Transfer of Agricultural Water Rights/Gravel Pit Storage (3,625 AF); and (5) the No Action Alternative, which assumes that Denver Water would not receive approval from the Corps to implement the Moffat Project. The No Action Alternative would require Denver Water to use a combination of strategies to meet the need for additional water supply, including using a portion of its Strategic Water Reserve and imposing mandatory restrictions to reduce demand during drought periods.

Copies of the Final EIS will be available for review at:

1. Arvada Library, 7525 West 57th Avenue, Arvada, CO 80002.
2. Boulder County Main Library, 1001 Arapahoe Avenue, Boulder, CO 80302.
3. Denver Central Library, 10 West 14th Avenue Parkway, Denver, CO 80204.
4. Fraser Valley Library, 421 Norgren Road, Fraser, CO 80442.
5. Golden Library, 1019 10th Street, Golden, CO 80401.
6. Granby Library, 55 Zero Street, Granby, CO 80446.
7. Kremmling Library, 300 South 8th Street, Kremmling, CO 80459.
8. Summit County Library North Branch, 651 Center Circle, Silverthorne, CO 80498.
9. Summit County Library South Branch, 504 Airport Road, Breckenridge, CO 80424.
10. Thornton Branch Library, 8992 Washington Street, Thornton, CO 80229.
11. Denver Water, 1600 West 12th Avenue, Denver, CO 80204.
12. U.S. Army Corps of Engineers, Omaha District, Denver Regulatory Office, 9307 South Wadsworth Boulevard, Littleton, CO 80128.

Electronically at: *http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Colorado/EISMoffat.aspx.*

Rena Brand,

Moffat EIS Project Manager, U.S. Army Corps of Engineers, Omaha District, Denver Regulatory Office.

[FR Doc. 2014–09318 Filed 4–24–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0066]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program, Federal Direct PLUS Loan Request for Supplemental Information

AGENCY: Federal Student Aid (FSA) Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 2014.

ADDRESSES: Comments submitted in response to this notice should be

submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0066 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Badger, 202–377–3229.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program, Federal Direct PLUS Loan Request for Supplemental Information.

OMB Control Number: 1845–0103.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 1,230,000.

Total Estimated Number of Annual Burden Hours: 615,000.

Abstract: The Federal Direct PLUS Loan Request for Supplemental Information serves as the means by which a parent or graduate/professional student Direct PLUS Loan applicant may provide certain information to a school that will assist the school in originating the borrower's Direct PLUS Loan award, as an alternative to providing this information to the school by other means established by the school.

Dated: April 22, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–09400 Filed 4–24–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Request for Comments on Draft Solicitation for Renewable Energy Projects and Efficient Energy Projects

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability and request for comments.

SUMMARY: The Loan Programs Office (LPO) of the Department of Energy (DOE) announces availability of a draft of a potential future solicitation for Federal Loan Guarantees for Renewable Energy Projects and Efficient Energy Projects. LPO invites comments regarding the draft of the potential future solicitation.

DATES: Comments regarding the draft of the potential future solicitation must be received on or before May 27, 2014.

ADDRESSES: Written comments may be sent to Peter W. Davidson, Executive Director, Loan Programs Office, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. The draft solicitation is available on LPO's Web site at *http://www.lgprogram.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Peter W. Davidson, *LPOREEESoliciationQuestions@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is considering a potential future solicitation for Federal Loan Guarantees for Renewable Energy Projects and Efficient Energy Projects. Should DOE choose to proceed which such a solicitation, applicants would be invited to apply for loan guarantees from DOE to finance projects and facilities located in the United States that employ innovative renewable energy and energy efficiency technologies (''Renewable Energy Projects and Efficient Energy Projects''). DOE may make up to Two Billion Five Hundred Million Dollars ($2,500,000,000) in loan guarantee authority available under the proposed solicitation for Renewable Energy Projects and Efficient Energy Projects, plus an additional amount that can be imputed based on the availability of an appropriation for the credit subsidy cost of such imputed loan guarantee authority. The amount of total loan guarantee authority that could be available pursuant to the proposed solicitation will depend on credit subsidy rates.

DOE is considering including in the potential future solicitation projects or facilities that use:

(a) Renewable energy systems;

(b) efficient electrical generation, transmission, and distribution technologies; or

(c) efficient end-use energy technologies;

(within the meaning of those terms in Section 1703(b)(1), (6), and (7) of Title XVII). Should DOE choose to proceed which such a solicitation, DOE would look favorably on eligible projects that will have a catalytic effect on the commercial deployment of future Renewable Energy Projects and/or Efficient Energy Projects that replicate or extend the innovative feature of the eligible project. While comments are sought on all aspects of the draft solicitation, DOE is particularly interested in comments regarding technologies that that will have a catalytic effect on the commercial deployment of future Renewable Energy Projects and/or Efficient Energy Projects that replicate or extend the innovative feature of the eligible project.

LPO is announcing a draft of a potential future solicitation for Federal Loan Guarantees for Renewable Energy Projects and Efficient Energy Projects. LPO invites comments regarding the draft of the potential future solicitation.

Authority: Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 *et seq.*).

Issued in Washington, DC, on April 21, 2014.

April Stephenson,

Chief Operating Officer, Loan Programs Office.

[FR Doc. 2014–09469 Filed 4–24–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9909–27–OEI]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. Seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Courtney Kerwin (202) 566–1669, or email at *Kerwin.Courtney@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1663.08; Compliance Assurance Monitoring Program (Renewal); 40 CFR part 64; was approved on 03/28/2014; OMB Number 2060–0376; expires on 03/31/2017; Approved with change.

EPA ICR Number 2227.04; NSPS for Stationary Spark Ignition Internal Combustion Engines (Renewal); 40 CFR part 60, subparts A and JJJJ; was approved on 03/28/2014; OMB Number 2060–0610; expires on 03/31/2017; Approved without change.

EPA ICR Number 1569.08; Approval of State Coastal Nonpoint Pollution Control Programs (Renewal); 15 CFR part 923; was approved on 03/28/2014; OMB Number 2040–0153; expires on 03/31/2017; Approved without change.

EPA ICR Number 1080.14; NESHAP for Benzene Emission from Benzene Storage Vessels and Coke By Product Recovery Plants (Renewal); 40 CFR part 61, subparts A, L, and Y; was approved on 03/28/2014; OMB Number 2060–0185; expires on 03/31/2017; Approved without change.

EPA ICR Number 2383.03; NESHAP for Gold Mine Ore Processing (Renewal); 40 CFR parts 63 and 40, subparts A and EEEEEEE; was approved on 03/28/2014; OMB Number 2060–0659; expires on 03/31/2017; Approved without change.

EPA ICR Number 2369.03; NSPS for Sewage Sludge Incinerators (Renewal); 40 CFR part 60, subparts A and LLLL; was approved on 03/28/2014; OMB Number 2060–0658; expires on 03/31/2017; Approved without change.

EPA ICR Number 2457.02; NESHAP for Group IV Polymers and Resins (Final Rule); 40 CFR part 63 subpart JJJ; was approved on 03/27/2014; OMB Number 2060–0682; expires on 03/31/2017; Approved without change.

EPA ICR Number 2484.02; Willingness To Pay for Santa Cruz River Management Options in Southern Arizona (Change); was approved on 03/06/2014; OMB Number 2080–0080; expires on 02/28/2015; Approved without change.

EPA ICR Number 0234.11; Performance Evaluation Studies on Wastewater Laboratories (Renewal); was approved on 03/04/2014; OMB Number 2080–0021; expires on 03/31/2017; Approved with change.

EPA ICR Number 1808.07; Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Renewal); 40 CFR part 8; was approved on 03/04/2014; OMB Number 2020–0007; expires on 03/31/2017; Approved without change.

EPA ICR Number 1136.11; NSPS for VOC Emissions from Petroleum Refinery Wastewater Systems (Renewal); 40 CFR part 60 subparts A and QQQ; was approved on 03/04/2014; OMB Number 2060–0172; expires on 03/31/2017; Approved without change.

Comment Filed

EPA ICR Number 1807.06; NESHAP for Pesticide Active Ingredient Production (Proposed Rule); 40 CFR part 63 subparts A and MMM; OMB filed comment on 03/28/2014.

EPA ICR Number 2443.01; NSPS for Residential Masonry Heaters (Proposed Rule); 40 CFR part 60 subparts A and RRRR; OMB filed comment on 03/06/2014.

EPA ICR Number 2442.01; NSPS for New Residential Hydronic Heaters and Forced-Air Furnaces (Proposed Rule); 40 CFR part 60 subparts A and QQQQ; OMB filed comment on 03/06/2014.

Dated: April 16, 2014.

Erin Collard,

Acting Director, Collections Strategies Division.

[FR Doc. 2014–09454 Filed 4–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0065; FRL 9909–89–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies (EPA ICR No. 1643.08, OMB Control No. 2060–0264), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2014. Public comments were previously requested via the **Federal Register** (79 FR 2828) on January 16, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 27, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0065, to (1) the EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

The EPA's policy is that all comments received will be included in the public

docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Paula Hirtz, OAQPS/SPPD, E143–01, Environmental Protection Agency, RTP, NC 27711; telephone number: 919–541–2618; fax number: 919–541–0246; email address: *hirtz.paula@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This information collection is an application from state, local, or tribal agencies (S/L/Ts) for delegation of regulations developed under section 112 of the Clean Air Act. The five options for delegation are straight delegation, rule adjustment, rule substitution, equivalency by permit, or state program approval. The information is needed and used to determine if the entity submitting an application has met the criteria established in 40 CFR part 63, subpart E. This information is necessary for the EPA Administrator to determine the acceptability of approving S/L/T's rules, requirements or programs in lieu of the federal section 112 rules or programs. The collection of information is authorized under 42 U.S.C. 7401–7671q.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are S/L/Ts participating in this voluntary program. These government establishments are classified as Air and Water Resource and Solid Waste Management Programs under Standard Industrial Classification (SIC) code 9511 and North American Industry Classification System (NAICS) code 92411. No industries under any SIC or NAICS codes will be included among respondents.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 119 S/L/Ts for maximum achievable control technology (MACT) standards and 95 S/L/Ts for area source standards per year.

Frequency of response: One time per delegation request.

Total estimated burden: 29,489 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $1,502,300, which includes $2,300 for operation and maintenance costs resulting from photocopying and postage expenses.

Changes in Estimates: This is a decrease of 7,618 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to: (1) Decrease in the number of MACT standard promulgations compared to last period, (2) a decrease in the number of area source standard promulgations compared to last period and (3) a decrease in the number of S/L/Ts taking area source delegation compared to last period.

Dated: April 17, 2014.

Erin Collard,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–09456 Filed 4–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0563; FRL 9909–88–OEI]

Information Request Submitted to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), National Volatile Organic Compound Emission Standards for Consumer Products (EPA ICR No. 1764.06, OMB Control No. 2060–0348), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2014. Public comments were previously requested via the **Federal Register** (79 FR 3799) on January 23, 2014, during a 60-day comment period. This notice allows for an additional 30 days for public comment. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 27, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2007–0563, to (1) EPA online using *www.regulations.gov* (our preferred method), by email: *a-and-r-docket@epa.gov* (include Docket ID Number EPA–HQ–OAR–2007–0563 in the subject line of the message), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Mail Code D243–04, Research Triangle Park, North Carolina 27711; telephone number 919–541–5580; fax number 919–541–5450; email address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The telephone number for the Docket Center is 202–566–1744. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, William Jefferson Clinton Building West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The EPA is required under section 183(e) of the Clean Air Act (CAA) to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to CAA section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Consumer products were included on the list, and the standards are codified at 40 CFR part 59, subpart C. The information collection includes initial

reports and periodic recordkeeping necessary for the EPA to ensure compliance with federal standards for volatile organic compounds in consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C, National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the agency's policies set forth in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The ICR provides a detailed explanation of the agency's estimate, which is only briefly summarized here:

Form Numbers: None.

Respondents/affected entities: Manufacturers and importers of consumer products.

Respondent's obligation to respond: Mandatory under 40 CFR part 59, subpart C, ''National Volatile Organic Compound Emission Standards for Consumer Products,'' and provide assurance that the mandates of section 183(e) of the CAA are being achieved.

Estimated number of respondents: 732 total.

Frequency of response: On occasion.

Total estimated burden: 29,613 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,364,069 (per year), which no capital or operation & maintenance costs.

Changes in the Estimates: There are no changes in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: April 17, 2014.

Erin Collard,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–09457 Filed 4–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9014–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed 04/14/2014 Through 04/18/2014 Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140125, Final EIS, FHWA, CA, California High-Speed Train (HST): Fresno to Bakersfield Section High-Speed Train, Review Period Ends: 05/27/2014, Contact: Stephanie Perez 202–493–0388.

EIS No. 20140126, Final Supplement, USN, 00, Introduction of the P–8A Multi-Mission Maritime Aircraft into the U.S. Navy Fleet, Review Period Ends: 05/27/2014, Contact: Cory Zahm 757–322–4347.

EIS No. 20140127, Final EIS, NPS, CA, Golden Gate National Recreation Area and Muir Woods National Monument Final General Management Plan/Environmental Impact Statement, Review Period Ends: 05/27/2014, Contact: Tom Gibney 303–969–2479.

EIS No. 20140128, Draft EIS, USFS, CA, Tule River Reservation Protection Project, Comment Period Ends: 06/09/2014, Contact: Richard Stevens 559–539–2607.

EIS No. 20140129, Final EIS, USACE, CO, Moffat Collection System Project, Review Period Ends: 06/09/2014, Contact: Rena Brand 303–979–4120.

Amended Notices

EIS No. 20140065, Draft EIS, USFS, OR, Proposed Revised Land Management Plans for the Malheur, Umatilla, and Wallowa-Whitman National Forests, Comment Period Ends: 08/15/2014, Contact: Sabrina Stadler 541–523–1264.

Revision to the FR Notice Published 03/14/2014; Extending the Comment Period from 06/16/2014 to 08/15/2014.

Dated: April 22, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–09448 Filed 4–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9909–81–Region 5]

Notice of Issuance of Minor Permit Modification to a Federal Operating Permit to NRG Reliability Solutions, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that, on March 6, 2014, pursuant to Title V of the Clean Air Act, the Environmental Protection Agency (EPA) issued a minor permit modification of a title V operating permit to NRG Reliability Solutions. NRG Reliability Solutions owns and operates four diesel-fired generators for Treasure Island Resort and Casino on land held in trust for the Prairie Island Indian Community in Red Wing, Minnesota. The modified title V operating permit changes the location where records are kept, adds insignificant activities omitted from the original permit application, and corrects typographical errors within the permit.

DATES: The final modified title V operating permit was issued and became effective on March 6, 2014.

ADDRESSES: The final signed permit is available for public inspection online at *http://yosemite.epa.gov/r5/r5ard.nsf/Tribal+Permits!OpenView,* or during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you call Michael Langman, Environmental Scientist, at (312) 886–6867 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Langman, Environmental Scientist, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6867, *langman.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

A. What is the background information?

NRG Reliability Solutions, LLC, formerly NRG Backup Generation Services, owns and operates four diesel-fired generators for Treasure Island Resort and Casino in Red Wing, Minnesota. All four generators are located on land held in trust by the United States for the Prairie Island Indian Community. The generators are used for peak load management and backup power at the casino.

On November 26, 2012, EPA issued a title V operating permit renewal, permit number V–PI–2704900084–2012–10, to NRG Backup Generation Services. On February 25, 2013, EPA issued an administrative permit amendment to the title V operating permit renewal, permit number V–PI–2704900084–2012–11, which changed the name of the owner and operator of the four diesel-fired generators to NRG Reliability Solutions, LLC.

On December 2, 2013, EPA received a letter from NRG Reliability Solutions requesting an administrative permit amendment to its title V operating permit to change the location where records required by the permit are kept and to add insignificant emission units that were omitted from the permit's application during the permit renewal process. EPA determined that the requested changes to the permit did not qualify for an administrative permit amendment since 40 CFR 71.7(d)(1) did not authorize the use of an administrative permit amendment for some of the requested revisions. EPA directed NRG Reliability Solutions to submit an application for the requested revisions pursuant to the minor permit modification requirements at 40 CFR 71.7(e).

On January 8, 2014, EPA received a minor permit modification application requesting revisions to the permit originally requested in the December 2, 2013, letter. In addition to the revisions identified in the December 2, 2013, letter, NRG Reliability Solutions also requested the correction of a typographical error in one of the permit's conditions.

EPA processed the minor permit modification application according to the regulations governing minor permit modification requirements at 40 CFR 71.7(e). EPA determined that the requested revisions to the title V operating permit satisfied the criteria at 40 CFR 71.7(e)(1)(i). EPA also determined that the application submitted by NRG Reliability Solutions satisfied the minor permit modification application requirements at 40 CFR 71.7(e)(1)(ii). On January 22, 2014, EPA sent letters to the Prairie Island Indian Community, the state of Wisconsin, and the state of Minnesota notifying each affected entity that EPA received a complete minor permit modification application as required by 40 CFR 71.7(e)(1)(iii), 40 CFR 71.8(a), and 40 CFR 71.8(d). Pursuant to 40 CFR 71.11, EPA did not issue a public notice beyond notifying affected states or tribes or provide a public comment period for this permit action because the action is a minor permit modification.

EPA issued a final minor permit modification, permit number V–PI–2704900084–2012–12, on March 6, 2014, in accordance with 40 CFR 71.7(e)(1)(iv). A copy of the final minor permit modification was sent to NRG Reliability Solutions on March 12, 2014.

B. What is the purpose of this notice?

EPA is notifying the public of the issuance of a minor modification to a title V operating permit, permit number V–PI–2704900084–2012–12, issued to NRG Reliability Solutions, LLC, on March 6, 2014. The permit became effective on March 6, 2014.

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

Dated: April 10, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–09459 Filed 4–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0011; FRL–9907–63]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before May 27, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA Registration Number of interest as shown in the body of this document, by one of the following methods:

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

FOR FURTHER INFORMATION CONTACT: 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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *EPA Registration Numbers:* 100–936, 100–1276, 100–1458. *Docket ID Number:* EPA–HQ–OPP–2013–0758. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active Ingredient:* Thiamethoxam. *Product Type:* Insecticide. *Proposed Uses:* Foliar application to alfalfa; corn (field, pop, seed, sweet); legumes; rice; small cereal grains (barley, buckwheat, oats, rye, triticale, wheat); and sunflower.

2. *EPA Registration Numbers:* 6836–107, 6836–350. *Docket ID Number:* EPA–HQ–OPP–2014–0110. *Applicant:* Lonza, Inc., 90 Boroline Road, Allendale, NJ 07401. *Active Ingredient:* Metaldehyde. *Product Type:* Mollusicide. *Proposed Uses:* Legume vegetable subgroups 6A and 6B; foliage of legume vegetable subgroup 7A; fruiting vegetable subgroup 8–10A; clover; ginseng; and citrus fruit group 10–10.

3. *EPA Registration Numbers:* 62719–623, 62719–625, 62719–631. *Docket ID Number:* EPA–HQ–OPP–2014–0156. *Applicant:* Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active Ingredient:* Sulfoxaflor. *Product Type:* Insecticide. *Proposed Uses:* Alfalfa, clover and other non-grass animal feeds (crop group 18); buckwheat; cacao; corn (field, pop, seed, sweet); millet; oats; pineapple; rye; sorghum; teff; and teosinte.

4. *EPA File Symbol:* 88602–E. *Docket ID Number:* EPA–HQ–OPP–2014–0252. *Applicant:* Prodigy Technical Holdings, LLC, 2813 Downing St., Flower Mound, TX 75028. *Active Ingredient:* Diflubenzuron. *Product Type:* Insect growth regulator. *Proposed Uses:* Indoor residential, carpets; companion animal.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 17, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2014–09449 Filed 4–24–14; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2014–0028]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP088724XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before May 20, 2014 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB–2014–0028 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2014–0028 on any attached document.

Reference: AP088724XX.

Purpose And Use:

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured aircraft to Chile.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger air service between Chile and destinations throughout the world.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: LATAM Airlines Group.

Guarantor(s): None.

Description of Items Being Exported:

Boeing 787 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Cristopolis A. Dieguez,

Business Compliance Analyst, Office of the Chief Financial Officer.

[FR Doc. 2014–09455 Filed 4–24–14; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 24, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0905.

Title: Section 18.213, Information to the User (Regulations for RF Lighting Devices).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and not-for-profit institutions.

Number of Respondents: 250 respondents; 250 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Total Annual Burden: 250 hours.

Total Annual Cost: $18,750.00.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance. The Commission has adjusted the number of respondents since there has been an increase in the use of RF lighting for high efficiency bulbs, which requires more manufacturers to include these labels for their product.

Section 18.213 (for which the Commission is seeking continued OMB approval) requires information on industrial, scientific and medical equipment shall be provided to the user in the instruction manual or on the packaging of an instruction manual is not provided for any type of ISM equipment. (a) The interference potential of the device or system (b) maintenance of the system; (c) simple measures that can be taken by the user to correct interference; and (d) manufacturers of RF lighting devices must provide an advisory statement, either on the product packaging or with other user documentation, similar to the following:

> This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz. Variations of this language are permitted provided all the points of the statement are addressed and may be presented in any legible font or text style.

The simple warning label with a short advisory statement will be used by the Commission to determine if an RF lighting device is in compliance with the applicable Commission rules and is capable of producing conducted emissions in the 0.45–30 MHz band.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–09375 Filed 4–24–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 24, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0325.

Title: Section 80.605, U.S. Coast Guard Coordination.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 10 respondents and 10 responses.

Estimated Time per Response: 1.1 hours.

Frequency of Response: On occasion reporting requirement and Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4, 303, 307(e), 309, and 332, 48 Stat. 1066, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted.

Total Annual Burden: 11 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 80.605 is necessary because applicants are required to obtain written permission from the Coast Guard in the area where radio-navigation/radio-location devices are located. This rule insures that no hazard to marine navigation will result from the grant of applications for non-selectable transponders and shore based radio-navigation aids. The Coast Guard is responsible for making this determination under 14 U.S.C. 18. Section 308(b) of the Communications Act of 1934, as amended, 47 U.S.C. 308(b) mandates that the Commission have such facts before it to determine whether an application should be granted or denied. The potential hazard to navigation is a critical factor in determining whether this type of radio device should be authorized.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–09445 Filed 4–24–14; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

[No. 2014–N–05]

Federal Home Loan Bank Members Selected for Community Support Review 2014–2015 Review Cycle—2nd Round

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2014–2015 Review Cycle—2nd Round under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before June 9, 2014.

ADDRESSES: Bank members selected for the 2014–2015 Review Cycle—2nd Round under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by electronic mail at *hmgcommunitysupportprogram@fhfa.gov* or by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, Division of Housing Mission and Goals (DHMG), 400 Seventh Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Melissa Allen, Senior Program Analyst, (202) 658–9266 or *Melissa.Allen@fhfa.gov*, or Rona Richardson, Administrative Office Manager, 202–649–3224 or *Rona.Richardson@fhfa.gov*, Office of Housing and Regulatory Policy, Division of Housing Mission and Goals, Federal Housing Finance Agency, Ninth Floor, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 1290.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to FHFA by the June 9, 2014 deadline prescribed in this notice. 12 CFR 1290.2(b)(1)(ii) and (c). On or before May 8, 2014, each Bank will notify the members in its district that have been selected for the 2014–2015 Review Cycle—2nd Round community support review that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR 1290.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on the FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2014–2015 Review Cycle—2nd Round community support review:

Federal Home Loan Bank of Boston—District 1

Collinsville Savings Society	Collinsville	Connecticut.
Essex Savings Bank	Essex	Connecticut.
Guilford Savings Bank	Guilford	Connecticut.
Damariscotta Bank and Trust Company	Damariscotta	Maine.
Franklin Savings Bank	Farmington	Maine.
Katahdin Trust Company	Patten	Maine.
Skowhegan Savings Bank	Skowhegan	Maine.
Athol Savings Bank	Athol	Massachusetts.
North Middlesex Savings Bank	Ayer	Massachusetts.
OneUnited Bank	Boston	Massachusetts.

First Federal Savings Bank of Boston	Boston	Massachusetts.
Peoples Federal Savings Bank	Brighton	Massachusetts.
East Cambridge Savings Bank	Cambridge	Massachusetts.
The Bank of Canton	Canton	Massachusetts.
Dedham Institution for Savings	Dedham	Massachusetts.
BayCoast Bank	Fall River	Massachusetts.
Family Federal Savings F.A.	Fitchburg	Massachusetts.
Florence Savings Bank	Florence	Massachusetts.
Blue Hills Bank	Hyde Park	Massachusetts.
Equitable Co-operative Bank	Lynn	Massachusetts.
Mansfield Co-operative Bank	Mansfield	Massachusetts.
Marblehead Bank	Marblehead	Massachusetts.
Milford National Bank and Trust Co.	Milford	Massachusetts.
Millbury Savings Bank	Millbury	Massachusetts.
Monson Savings Bank	Monson	Massachusetts.
Scituate Federal Savings Bank	Scituate	Massachusetts.
Southbridge Savings Bank	Southbridge	Massachusetts.
Hampden Bank	Springfield	Massachusetts.
Bristol County Savings Bank	Taunton	Massachusetts.
Hometown Bank, A Co-operative Bank	Webster	Massachusetts.
S-Bank	Weymouth	Massachusetts.
Union Bank	Morrisville	Vermont.

Federal Home Loan Bank of New York—District 2

Sturdy Savings Bank	Cape May Court House	New Jersey.
Spencer Savings Bank, SLA	Elmwood Park	New Jersey.
NVE Bank	Englewood	New Jersey.
Freehold Savings & Loan Association	Freehold	New Jersey.
Morgan Stanley Trust	Jersey City	New Jersey.
Schuyler Savings Bank	Kearny	New Jersey.
Lincoln Park Savings Bank	Lincoln Park	New Jersey.
Metuchen Savings Bank	Metuchen	New Jersey.
Millington Savings Bank	Millington	New Jersey.
Ocean City Home Bank	Ocean City	New Jersey.
Boiling Springs Savings Bank	Rutherford	New Jersey.
Investors Savings Bank	Short Hills	New Jersey.
Bogota Savings Bank	Teaneck	New Jersey.
Colonial Bank FSB	Vineland	New Jersey.
The Bank	Woodbury	New Jersey.
Brooklyn Federal Savings Bank	Brooklyn	New York.
Elmira Savings Bank, FSB	Elmira	New York.
Maspeth Federal Savings and Loan Association	Maspeth	New York.
Carver Federal Savings Bank	New York	New York.
Chinatown Federal Savings Bank	New York	New York.
Country Bank	New York	New York.
Abacus Federal Savings Bank	New York	New York.
PathFinder Bank	Oswego	New York.
The Upstate National Bank	Rochester	New York.
Doral Bank	San Juan	Puerto Rico.

Federal Home Loan Bank of Pittsburgh—District 3

Artisans' Bank	Wilmington	Delaware.
Altoona First Savings Bank	Altoona	Pennsylvania.
Investment Savings Bank	Altoona	Pennsylvania.
First Columbia Bank & Trust Company	Bloomsburg	Pennsylvania.
Community Bank, N.A.	Carmichaels	Pennsylvania.
Charleroi Federal Savings Bank	Charleroi	Pennsylvania.
Coatesville Savings Bank	Coatesville	Pennsylvania.
FirsTrust Bank	Conshohocken	Pennsylvania.
First National Community Bank	Dunmore	Pennsylvania.
Armstrong County Building & Loan Association	Ford City	Pennsylvania.
Greenville Savings Bank	Greenville	Pennsylvania.
Peoples Neighborhood Bank	Hallstead	Pennsylvania.
1st Summit Bank	Johnstown	Pennsylvania.
Westmoreland Federal Savings & Loan Association	Latrobe	Pennsylvania.
Mifflin County Savings Bank	Lewistown	Pennsylvania.
Mifflinburg Bank & Trust Company	Mifflinburg	Pennsylvania.
The Muncy Bank and Trust Company	Muncy	Pennsylvania.
Sewickley Savings Bank	Sewickley	Pennsylvania.
ESSA Bank & Trust	Stroudsburg	Pennsylvania.
Citizens & Northern Bank	Wellsboro	Pennsylvania.
The Honesdale National Bank	Wilkes-Barre	Pennsylvania.
Calhoun County Bank, Inc.	Grantsville	West Virginia.
Huntington Federal Savings Bank	Huntington	West Virginia.

Citizens Bank of Morgantown	Morgantown	West Virginia.
Doolin Security Savings Bank FSB	New Martinsville	West Virginia.
First Federal Savings & Loan Association of Ravenswood	Ravenswood	West Virginia.
First National Bank	Ronceverte	West Virginia.
Williamstown Bank, Inc.	Williamstown	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Robertson Banking Company	Demopolis	Alabama.
The Southern Bank Company	Gadsden	Alabama.
The Citizens Bank	Greensboro	Alabama.
The Headland National Bank	Headland	Alabama.
First Tuskegee Bank	Montgomery	Alabama.
Phenix-Girard Bank	Phenix City	Alabama.
Citizens Bank, Inc.	Robertsdale	Alabama.
The Bank of Vernon	Vernon	Alabama.
Bank of Belle Glade	Belle Glade	Florida.
Community Bank of Manatee	Bradenton	Florida.
BankAtlantic	Fort Lauderdale	Florida.
Eagle National Bank of Miami	Miami	Florida.
International Finance Bank	Miami	Florida.
BankUnited, FSB	Miami Lakes	Florida.
Charlotte State Bank	Port Charlotte	Florida.
Federal Trust Bank	Sanford	Florida.
Capital City Bank	Tallahassee	Florida.
Georgia Bank and Trust Company of Augusta	Augusta	Georgia.
First National Bank of Coffee County	Douglas	Georgia.
Elberton Federal Savings & Loan Association	Elberton	Georgia.
Pineland State Bank	Metter	Georgia.
Greater Rome Bank	Rome	Georgia.
The Coastal Bank	Savannah	Georgia.
First Federal Savings and Loan of Valdosta	Valdosta	Georgia.
Homewood Federal Savings Bank	Baltimore	Maryland.
Fraternity Federal S&L Association	Baltimore	Maryland.
Hamilton Federal Bank	Baltimore	Maryland.
Advance Bank	Baltimore	Maryland.
The Talbot Bank of Easton	Easton	Maryland.
Madison Bohemian Savings Bank	Forest Hills	Maryland.
Jarrettsville Federal S&L Association	Jarrettsville	Maryland.
Colombo Bank	Rockville	Maryland.
American Bank	Silver Spring	Maryland.
Sykesville Federal Savings Association	Sykesville	Maryland.
AmericasBank	Towson	Maryland.
Maryland Bank and Trust Company, N.A.	Waldorf	Maryland.
First Bank	Troy	North Carolina.
First Palmetto Savings Bank, FSB	Camden	South Carolina.
Spratt Savings and Loan Association	Chester	South Carolina.
The Peoples Bank	Iva	South Carolina.
The Palmetto Bank	Laurens	South Carolina.
The Citizens Bank	Olanta	South Carolina.
Woodruff Federal Savings & Loan Association	Woodruff	South Carolina.
Virginia Commerce Bank	Arlington	Virginia.
EVB	Glenns	Virginia.
Powell Valley National Bank	Jonesville	Virginia.
Shore Bank	Onley	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

United Citizens Bank & Trust Company	Campbellsburg	Kentucky.
Farmers and Traders Bank of Campton	Campton	Kentucky.
First Community Bank of Western Kentucky, Inc	Clinton	Kentucky.
Clinton Bank	Clinton	Kentucky.
Citizens Federal Savings and Loan Association of Covington	Covington	Kentucky.
South Central Bank, FSB	Elizabethton	Kentucky.
United Kentucky Bank of Pendleton County, Inc	Falmouth	Kentucky.
Fredonia Valley Bank	Fredonia	Kentucky.
First Federal Savings & Loan Association	Hazard	Kentucky.
Bank of the Bluegrass & Trust Company	Lexington	Kentucky.
Peoples Security Bank	Louisa	Kentucky.
The First Capital Bank of Kentucky	Louisville	Kentucky.
Republic Bank	Louisville	Kentucky.
Peoples Bank of Mt. Washington	Mt. Washington	Kentucky.
Farmers Bank & Trust Company, Inc.	Princeton	Kentucky.
First Southern National Bank	Stanford	Kentucky.
Liberty National Bank	Ada	Ohio.
First Federal Community Bank of Bucyrus	Bucyrus	Ohio.

First Safety Bank	Cincinnati	Ohio.
The Savings Bank	Circleville	Ohio.
Third Federal Savings & Loan Association of Cleveland	Cleveland	Ohio.
The Peoples Bank Company	Coldwater	Ohio.
First City Bank	Columbus	Ohio.
The Cortland Savings and Banking Company	Cortland	Ohio.
United Midwest Savings Bank	DeGraff	Ohio.
Fidelity Federal Savings and Loan Association of Delaware	Delaware	Ohio.
First Federal Community Bank	Dover	Ohio.
Heartland Bank	Gahanna	Ohio.
Merchants National Bank	Hillsboro	Ohio.
Kingston National Bank	Kingston	Ohio.
First Federal Savings & Loan Association of Lakewood	Lakewood	Ohio.
The Mechanics Savings Bank	Mansfield	Ohio.
Peoples Bank, National Association	Marietta	Ohio.
The Middlefield Banking Company	Middlefield	Ohio.
The Nelsonville Home and Savings Association	Nelsonville	Ohio.
New Carlisle Federal Savings Bank	New Carlisle	Ohio.
First Federal Savings & Loan Association of Newark	Newark	Ohio.
The Valley Central Savings Bank	Reading	Ohio.
Peoples Federal Savings and Loan Association of Sidney	Sidney	Ohio.
Commodore Bank	Somerset	Ohio.
Somerville National Bank	Somerville	Ohio.
Perpetual Federal Savings Bank	Urbana	Ohio.
Van Wert Federal Savings Bank	Van Wert	Ohio.
The Waterford Commercial and Savings Bank	Waterford	Ohio.
Liberty Savings Bank, F.S.B.	Wilmington	Ohio.
Farmers & Merchants Bank	Adamsville	Tennessee.
Bank of Crockett	Bells	Tennessee.
Decatur County Bank	Decaturville	Tennessee.
Progressive Savings Bank, F.S.B.	Jamestown	Tennessee.
Wilson Bank and Trust	Lebanon	Tennessee.
First National Bank of Tennessee	Livingston	Tennessee.
Volunteer Federal Savings & Loan Association of Madisonville	Madisonville	Tennessee.
Trust One Bank	Memphis	Tennessee.
Jefferson Federal Bank	Morristown	Tennessee.
Newport Federal Bank	Newport	Tennessee.
Citizens Community Bank	Winchester	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

First Federal Savings Bank—Angola	Angola	Indiana.
Boonville Federal Savings Bank	Boonville	Indiana.
Riddell National Bank	Brazil	Indiana.
Union Savings & Loan Association	Connersville	Indiana.
Farmers Bank	Frankfort	Indiana.
First Federal Savings & Loan of Greensburg	Greensburg	Indiana.
Lake Federal Bank, FSB	Hammond	Indiana.
Kentland Federal Savings and Loan Association	Kentland	Indiana.
Logansport Savings Bank, FSB	Logansport	Indiana.
Community Bank	Noblesville	Indiana.
The First National Bank of Odon	Odon	Indiana.
First Bank Richmond, N.A.	Richmond	Indiana.
Scottsburg Building & Loan Association	Scottsburg	Indiana.
Grant County State Bank	Swayzee	Indiana.
Crossroads Bank	Wabash	Indiana.
First Federal Savings Bank	Washington	Indiana.
Liberty Savings Bank, FSB	Whiting	Indiana.
Bay Port State Bank	Bay Port	Michigan.
Monarch Community Bank	Coldwater	Michigan.
Huron Community Bank	East Tawas	Michigan.
Union Bank	Lake Odessa	Michigan.
Peoples State Bank of Munising	Munising	Michigan.
New Buffalo Savings Bank, FSB	New Buffalo	Michigan.
Central Savings Bank	Sault Ste. Marie	Michigan.
Edgewater Bank	St. Joseph	Michigan.
First National Bank of Wakefield	Wakefield	Michigan.

Federal Home Loan Bank of Chicago—District 7

First State Bank of Beecher City	Beecher City	Illinois.
American Enterprise Bank	Buffalo Grove	Illinois.
The First National Bank in Carlyle	Carlyle	Illinois.
CIBM	Champaign	Illinois.
Community Savings Bank	Chicago	Illinois.
Illinois Service Federal Savings and Loan Association	Chicago	Illinois.

Liberty Bank for Savings	Chicago	Illinois.
Pulaski Savings Bank	Chicago	Illinois.
GreenChoice Bank, fsb	Chicago	Illinois.
South Central Bank, National Association	Chicago	Illinois.
West Town Savings Bank	Cicero	Illinois.
Home Federal Savings and Loan Association of Collinsville	Collinsville	Illinois.
Collinsville Building and Loan Association	Collinsville	Illinois.
Flora Bank & Trust	Flora	Illinois.
Forreston State Bank	Forreston	Illinois.
Guardian Savings Bank	Granite City	Illinois.
Heritage State Bank	Lawrenceville	Illinois.
Lisle Savings Bank	Lisle	Illinois.
First Bank of Manhattan	Manhattan	Illinois.
McHenry Savings Bank	McHenry	Illinois.
The City National Bank of Metropolis	Metropolis	Illinois.
Milford Building & Loan Association, SB	Milford	Illinois.
Wabash Savings Bank	Mount Carmel	Illinois.
Brown County State Bank	Mount Sterling	Illinois.
The Farmers Bank of Mt. Pulaski	Mt. Pulaski	Illinois.
Nashville Savings Bank	Nashville	Illinois.
First Robinson Savings Bank, National Association	Robinson	Illinois.
First Federal Savings & Loan Association of Central Illinois	Shelbyville	Illinois.
Town and Country Bank	Springfield	Illinois.
The First National Bank	Vandalia	Illinois.
Banner Banks	Birnamwood	Wisconsin.
The Bank of Brodhead	Brodhead	Wisconsin.
North Shore Bank, FSB	Brookfield	Wisconsin.
National Exchange Bank & Trust	Fond du Lac	Wisconsin.
Greenleaf Wayside Bank	Greenleaf	Wisconsin.
Hustisford State Bank	Hustisford	Wisconsin.
Ixonia Bank	Ixonia	Wisconsin.
Mid America Bank	Janesville	Wisconsin.
Union State Bank	Kewaunee	Wisconsin.
Bank of Lake Mills	Lake Mills	Wisconsin.
BLC Community Bank	Little Chute	Wisconsin.
First Community Bank	Milton	Wisconsin.
West Pointe Bank	Oshkosh	Wisconsin.
Dairy State Bank	Rice Lake	Wisconsin.
Wisconsin River Bank	Sauk City	Wisconsin.
Heritage Bank	Spencer	Wisconsin.
Superior Savings Bank	Superior	Wisconsin.
Farmers & Merchants Bank	Tomah	Wisconsin.
First Bank	Tomah	Wisconsin.
Paper City Savings Association	Wisconsin Rapids	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

Peoples State Bank	Albia	Iowa.
Citizens Savings Bank	Anamosa	Iowa.
Boone Bank & Trust Company	Boone	Iowa.
Iowa Prairie Bank	Brunsville	Iowa.
Lincoln Savings Bank	Cedar Falls	Iowa.
Iowa Trust and Savings Bank	Centerville	Iowa.
Principal Bank	Des Moines	Iowa.
Dubuque Bank & Trust Company	Dubuque	Iowa.
Citizens State Bank	Fort Dodge	Iowa.
Keokuk Savings Bank & Trust Company	Keokuk	Iowa.
Iowa State Savings Bank	Knoxville	Iowa.
Cedar Valley Bank & Trust	La Porte City	Iowa.
Heritage Bank	Marion	Iowa.
United Community Bank	Milford	Iowa.
New Albin Savings Bank	New Albin	Iowa.
City State Bank	Norwalk	Iowa.
Clarke County State Bank	Osceola	Iowa.
Sibley State Bank	Sibley	Iowa.
American State Bank	Sioux Center	Iowa.
West Liberty State Bank	West Liberty	Iowa.
Bremer Bank, NA	Alexandria	Minnesota.
Farmers and Merchants State Bank of Blooming Prairie	Blooming Prairie	Minnesota.
First Bank Blue Earth	Blue Earth	Minnesota.
State Bank in Eden Valley	Eden Valley	Minnesota.
Bank Midwest	Fairmont	Minnesota.
Harvest Bank	Kimball	Minnesota.
The First National Bank of Le Center	Le Center	Minnesota.
First State Bank Minnesota	Le Roy	Minnesota.
Star Bank	Maple Lake	Minnesota.

First National Bank of Menahga and Sebeka	Menahga	Minnesota.
First Minnesota Bank	Minnetonka	Minnesota.
The First National Bank of Osakis	Osakis	Minnesota.
Prior Lake State Bank	Prior Lake	Minnesota.
Citizens Independent Bank	St. Louis Park	Minnesota.
Minnwest Bank South	Tracy	Minnesota.
Belgrade State Bank	Belgrade	Missouri.
O'Bannon Banking Company	Buffalo	Missouri.
First National Bank	Camdenton	Missouri.
1st Cameron State Bank	Cameron	Missouri.
Bank 21	Carrollton	Missouri.
Southwest Missouri Bank	Carthage	Missouri.
First Bank	Creve Coeur	Missouri.
Security Bank of the Ozarks	Eminence	Missouri.
Rockwood Bank	Eureka	Missouri.
Missouri Bank & Trust Company	Kansas City	Missouri.
KCB Bank	Kearney	Missouri.
Clay County Savings Bank	Liberty	Missouri.
BankLiberty	Liberty	Missouri.
First Home Savings Bank	Mountain Grove	Missouri.
Boulevard Bank	Neosho	Missouri.
Progressive Ozark Bank, FSB	Salem	Missouri.
Community State Bank	Shelbina	Missouri.
Bremen Bank and Trust Company	St. Louis	Missouri.
Southern Commercial Bank	St. Louis	Missouri.
Community Bank, NA	Summersville	Missouri.
Peoples Bank & Trust Company	Troy	Missouri.
Bank of Urbana	Urbana	Missouri.
The Missouri Bank	Warrenton	Missouri.
First State Bank of North Dakota	Arthur	North Dakota.
Liberty State Bank	Powers Lake	North Dakota.
Dacotah Bank	Aberdeen	South Dakota.
First Savings Bank	Beresford	South Dakota.
First Bank & Trust	Brookings	South Dakota.
Reliabank Dakota	Estelline	South Dakota.
Campbell County Bank, Inc.	Herreid	South Dakota.
Plains Commerce Bank	Hoven	South Dakota.
CorTrust Bank, National Association	Mitchell	South Dakota.
Farmers and Merchants State Bank	Plankinton	South Dakota.
First Western Federal Savings Bank	Rapid City	South Dakota.
First Premier Bank	Sioux Falls	South Dakota.
Commercial State Bank	Wagner	South Dakota.

Federal Home Loan Bank of Dallas—District 9

Heartland Community Bank	Bryant	Arkansas.
Community First Bank	Harrison	Arkansas.
First Arkansas Bank & Trust	Jacksonville	Arkansas.
Union Bank and Trust Company	Monticello	Arkansas.
Farmers & Merchants Bank	Stuttgart	Arkansas.
Abbeville Building & Loan, a State Chartered Savings Bank	Abbeville	Louisiana.
First National Bank USA	Boutte	Louisiana.
Community Trust Bank	Choudrant	Louisiana.
United Community Bank	Gonzales	Louisiana.
Iberia Bank	Lafayette	Louisiana.
First Federal Bank of Louisiana	Lake Charles	Louisiana.
The Union Bank	Marksville	Louisiana.
Bank of New Orleans	Metairie	Louisiana.
MBL Bank	Minden	Louisiana.
Fifth District Savings Bank	New Orleans	Louisiana.
Crescent Bank & Trust	New Orleans	Louisiana.
Citizens Bank & Trust Company	Plaquemine	Louisiana.
Anthem Bank & Trust Company	Plaquemine	Louisiana.
Plaquemine Bank & Trust Company	Plaquemine	Louisiana.
Rayne Building and Loan Association	Rayne	Louisiana.
Bank of Zachary	Zachary	Louisiana.
Magnolia State Bank	Bay Springs	Mississippi.
State Bank & Trust Company	Brookhaven	Mississippi.
Grand Bank for Savings, FSB	Hattiesburg	Mississippi.
The First, A National Banking Association	Hattiesburg	Mississippi.
OmniBank	Jackson	Mississippi.
Trustmark National Bank	Jackson	Mississippi.
Bank of Okalona	Okolona	Mississippi.
First National Bank of Pontotoc	Pontotoc	Mississippi.
Bank 34	Alamogordo	New Mexico.
The First National Bank of New Mexico	Clayton	New Mexico.

Citizens Bank of Las Cruces	Las Cruces	New Mexico.
Southwest Capital Bank	Las Vegas	New Mexico.
Amplify Federal Credit Union	Austin	Texas.
The Brenham National Bank	Brenham	Texas.
Shelby Savings Bank, SSB	Center	Texas.
Chappell Hill Bank	Chappell Hill	Texas.
The First National Bank of Chillicothe	Chillicothe	Texas.
First Bank, National Association	Conroe	Texas.
Charter Bank	Corpus Christi	Texas.
Citizens National Bank	Crockett	Texas.
First National Bank in Dalhart	Dalhart	Texas.
Preston National Bank	Dallas	Texas.
Meridian Bank Texas	Fort Worth	Texas.
Gladewater National Bank	Gladewater	Texas.
Justin State Bank	Justin	Texas.
Falcon International Bank	Laredo	Texas.
Spring Hill State Bank	Longview	Texas.
First State Bank	Louise	Texas.
First Federal Community Bank	Paris	Texas.
Peoples Bank	Paris	Texas.
Robert Lee State Bank	Robert Lee	Texas.
Citizens State Bank	Sealy	Texas.
First State Bank	Stratford	Texas.
First State Bank Central Texas	Temple	Texas.
American National Bank of Texas	Terrell	Texas.
Citizens 1st Bank	Tyler	Texas.
Hill Bank & Trust Company	Weimar	Texas.

Federal Home Loan Bank of Topeka—District 10

San Luis Valley Federal Bank	Alamosa	Colorado.
Valley Bank & Trust Company	Brighton	Colorado.
Collegiate Peaks Bank	Buena Vista	Colorado.
Farmers State Bank of Calhan	Calhan	Colorado.
Castle Rock Bank	Castle Rock	Colorado.
First National Bank of Durango	Durango	Colorado.
High Plains Bank	Flagler	Colorado.
Rocky Mountain Bank and Trust	Florence	Colorado.
Morgan Federal Bank	Fort Morgan	Colorado.
Colorado Federal Savings Bank	Greenwood Village	Colorado.
Rio Grande Savings and Loan Association	Monte Vista	Colorado.
Century Savings & Loan Association	Trinidad	Colorado.
Park State Bank & Trust	Woodland Park	Colorado.
Peoples Exchange Bank	Belleville	Kansas.
The Elk State Bank	Clyde	Kansas.
Golden Belt Bank, FSA	Ellis	Kansas.
Girard National Bank	Girard	Kansas.
Central National Bank	Junction City	Kansas.
Argentine Federal Savings	Kansas City	Kansas.
Inter-State Federal Savings & Loan Association of Kansas City	Kansas City	Kansas.
Citizens Bank of Kansas, N.A.	Kingman	Kansas.
Kanza Bank	Kingman	Kansas.
The Citizens State Bank	Moundridge	Kansas.
Midland National Bank	Newton	Kansas.
First Federal Savings & Loan Bank	Olathe	Kansas.
Bank of Blue Valley	Overland Park	Kansas.
Peabody State Bank	Peabody	Kansas.
The Peoples Bank	Pratt	Kansas.
The Roxbury Bank	Roxbury	Kansas.
First Bank Kansas	Salina	Kansas.
Stockton National Bank	Stockton	Kansas.
Garden Plain State Bank	Wichita	Kansas.
Farmers & Merchants Bank	Ashland	Nebraska.
Pinnacle Bank	Lincoln	Nebraska.
Security Home Bank	Malmo	Nebraska.
The Nehawka Bank	Nehawka	Nebraska.
Security National Bank of Omaha	Omaha	Nebraska.
First State Bank of Porter	Porter	Nebraska.
Platte Valley Bank	Scottsbluff	Nebraska.
Platte Valley Bank	Scottsbluff	Nebraska.
Horizon Bank	Waverly	Nebraska.
First National Bank & Trust Company of Ardmore	Ardmore	Oklahoma.
Citizens Security Bank & Trust Company	Bixby	Oklahoma.
McCurtain County National Bank	Broken Bow	Oklahoma.
Oklahoma Bank & Trust Company	Clinton	Oklahoma.
First Texoma National Bank	Durant	Oklahoma.

First National Bank of Elk City	Elk City	Oklahoma.
Bank of the Panhandle	Guymon	Oklahoma.
First National Bank in Marlow	Marlow	Oklahoma.
BancFirst	Oklahoma City	Oklahoma.
First American Bank	Purcell	Oklahoma.
The Farmers State Bank	Quinton	Oklahoma.
First National Bank & Trust Company	Shawnee	Oklahoma.
Valley National Bank	Tulsa	Oklahoma.
The First National Bank of Vinita	Vinita	Oklahoma.
Federal Home Loan Bank of San Francisco—District 11		
Bank 1440	Phoenix	Arizona.
Bay Federal Credit Union	Capitola	California.
Xceed Financial Federal Credit Union	El Segundo	California.
Fremont Bank	Fremont	California.
American First Credit Union	La Habra	California.
Silvergate Bank	La Jolla	California.
Preferred Bank	Los Angeles	California.
Broadway Federal Bank, F.S.B.	Los Angeles	California.
Monterey County Bank	Monterey	California.
Oak Valley Community Bank	Oakdale	California.
Malaga Bank, F.S.B.	Palos Verdes Estates	California.
El Dorado Savings Bank, F.S.B.	Placerville	California.
Bank of Southern California, National Association	Ramona	California.
Bank of San Francisco	San Francisco	California.
CSAA Insurance Exchange	San Francisco	California.
AltaPacific Bank	Santa Rosa	California.
Bank of America California, N.A.	Walnut Creek	California.
Federal Home Loan Bank of Seattle—District 12		
Mt. McKinley Bank	Fairbanks	Alaska.
BankPacific	Hagatna	Guam.
Ireland Bank	Malad	Idaho.
First Federal Savings Bank of Twin Falls	Twin Falls	Idaho.
United Bank	Absarokee	Montana.
Pioneer Federal Savings & Loan Association	Dillon	Montana.
American Federal Savings Bank	Helena	Montana.
Glacier Bank	Kalispell	Montana.
First Security Bank of Malta	Malta	Montana.
Bank of American Fork	American Fork	Utah.
TransWest Credit Union	Salt Lake City	Utah.
Bank of Fairfield	Fairfield	Washington.
Kitsap Bank	Port Orchard	Washington.
Washington Federal	Seattle	Washington.
Sterling Savings Bank	Spokane	Washington.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before May 8, 2014, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2014–2015 Review Cycle—2nd Round. 12 CFR 1290.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2014–2015 Review Cycle—2nd Round must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, Housing Mission and Goals (DHMG), 400 Seventh Street SW., Washington, DC 20024, or by electronic mail to *hmgcommunitysupportprogram@fhfa.gov* on or before the June 9, 2014 deadline for submission of Community Support Statements.

Dated: April 17, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–09336 Filed 4–24–14; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Li Chen, Ph.D., Mount Sinai School of Medicine: Based on evidence and findings of an investigation report by Mount Sinai School of Medicine (MSSM) transmitted to the United States Department of Health and Human Services (HHS), Office of Research Integrity (ORI), in April 2010 and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Li Chen, former Postdoctoral Fellow, Department of Gene and Cell Medicine, MSSM, engaged in research misconduct in research that was supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grant R01 DK062972 and National

Institute of General Medical Sciences (NIGMS), NIH, grant P20 GM075019 and was submitted in grant applications R01 DK074695 and R01 DK083286 to NIDDK, NIH, P20 GM075019 to NIGMS, NIH, and R01 NS062054 to the National Institute of Neurological Disorders and Stroke (NINDS), NIH.

ORI found that the Respondent intentionally, knowingly, and recklessly fabricated and falsified data reported in four (4) publications, one (1) submitted manuscript, and four (4) grant applications:

- Chen, L., & Woo, S.L.C. ''Complete and persistent phenotypic correction of phenylketonuria in mice by site-specific genome integration of murine phenylalanine hydroxylase cDNA.'' *Proc. Natl. Acad. Sci. U.S.A.* 102(43):15581–15586, October 2005 (hereafter referred to as ''*PNAS* 2005'').
- Chen, L., Thung, S.N., & Woo, S.L.C. ''Metabolic Basis of Sexual Dimorphism in PKU Mice After Genome-targeted PAH Gene Therapy.'' *Mol. Ther.* 15:1079–1085, June 2007; Retracted in December 2010 (hereafter referred to as ''*Mol. Ther.* June 2007'').
- Chen, L., & Woo, S.L.C. ''Correction in Female PKU Mice by Repeated Administration of mPAH cDNA Using phiBT1 Integration System.'' *Mol. Ther.* 15:1789–1795, October 2007; Retracted in December 2010 (hereafter referred to as ''*Mol. Ther.* Oct. 2007'').
- Chen, L., & Woo, S.L.C. ''Site-Specific Transgene Integration in the Human Genome Catalyzed by ÖBT1 Phage Integrase.'' *Hum. Gene Ther.* 19:143–151, February 2008; Retracted in August 2010 (hereafter referred to as ''*HGT* 2008'').
- Chen, L., Roy, I., Prasad, P.N., & Woo, S.L.C. ''Nanoparticle-Based Gene Therapy for Metabolic Disorders: Hepatic Delivery of Minicircle DNA for Complete Correction of Phenylketonuria.'' Submitted for publication in *Proc. Natl. Acad. Sci. U.S.A.* (hereafter referred to as the ''*PNAS* 2008 manuscript'').
- R01 DK074695, ''Genome-targeted PAH Gene Integration in PKU Mice and Sexual Dimorphism,'' Savio L.C. Wood, Ph.D., Principal Investigator (P.I.) (hereafter referred to as ''R01 DK074695'').
- P20 GM075019, ''Growth, Differentiation & Genetic Alteration of Human ES Cells,'' Gordon M. Keller, Ph.D., P.I. (hereafter referred to as ''P20 GM075019'').
- R01 NS062054, ''Nanoparticle-medicated Gene Therapy for PKU,'' Savio L. Woo, Ph.D., P.I. (hereafter referred to as ''R01 NS062054'').
- R01 DK083285, ''Nanoparticle-Mediated Gene Therapy PKU,'' Savio L. Woo, Ph.D., P.I. (hereafter referred to as ''R01 DK083285'').

The Respondent fabricated figures reporting the chromosomal locations of integration sites, fabricated data reporting the use of polymerase chain reaction (PCR) to determine integration frequencies, falsified data representing the detection of chromosomal translocations in human cells, and fabricated figures by falsely reporting the results of High-Performance Liquid Chromatography (HPLC) assays. The Respondent also falsified experimental data for LacZ stained liver sections and for hematoxylin and eosin (H&E) stained liver sections.

Specifically, ORI finds by a preponderance of the evidence that the Respondent engaged in misconduct in science and research misconduct by intentionally, knowingly, and recklessly:

1. fabricating and/or falsifying nineteen (19) figures by falsely reporting that phenylketonuria (PKU) gene therapy experiments were successfully completed, when the available evidence shows the experiments were not performed; specifically the Respondent:

(a) fabricated figures where DNA sequencing was purportedly used to identify the chromosomal locations of integration sites for the PAH gene in mouse and human cells, reported in seven (7) figures:

- *PNAS* 2005, Figure 2A
- *HGT* 2008, Figures 3b and 3c
- R01 NS062054, Figures 3 and 20
- R01 DK074695, Figure 6
- R01 DK083286, Figure 17
- P20 GM075019, Figure 4

(b) fabricated data purportedly representing the use of PCR to determine integration frequencies for the phenylalanine hydroxylase (PAH) gene and the secreted embryonic alkaline phosphatase (SEAP) reporter gene, in mouse and human cells, reported in eleven (11) figures:

- *PNAS* 2005, Figures 2C and 3B
- *Mol. Ther.* June 2007, Figures 2a and 5a
- *Mol. Ther.* Oct. 2007, Figures 2d and 5a
- *HGT* 2008, Figure 4
- R01 NS062054, Figures 4b and 10a
- R01 DK074695, Figure 7b
- R01 DK083286, Figure 2b

(c) falsified figures representing the detection of chromosomal tranlocations in human cells, purportedly determined by PCR in two (2) figures:

- *HGT* 2008, Figure 5a
- R01 NS062054, Figure 21a

2. fabricating the results of HPLC assays to show generally lowered blood levels of phenylalanine after PKU gene therapy and to show liver levels of BH_4 when the Respondent did not have the HPLC data needed to support those claims; specifically the Respondent:

(a) fabricated serum phenylalanine graphs in:

- *PNAS* 2005, Figure 4B; this false data also is presented in R01 DK074695, Figure 10b
- *Mol. Ther.* June 2007, Figure 1a; this false data also is presented in R01 DK074695, Figure 11
- R01 DK083286, Figure 3; this false data also is presented in *Mol. Ther.* June 2007, Figure 3, and R01 NS062054, Figure 7
- *Mol. Ther.* Oct. 2007, Figure 4a; this false data also is presented in R01 NS062054, Figure 9a
- *PNAS* 2008 manuscript, Figure 4

(b) fabricated graphs for BH_4 levels in:

- *Mol. Ther.* June 2007, Figure 5c; this false data also is presented in R01 NS062054, Figure 8c

3. falsely reporting the results of LacZ stained liver sections by reusing and relabeling an image and claiming that it represents different experiments; specifically, the same image was used to represent mice treated with a nanoplex gene delivery system in R01 NS062054, Figure 14b (right panel), and also to represent a wholly different experiment for mice treated with 10 injections of the phiBT1 integrase system alone in R01 NS062054, Figure 4c (right panel), and *Mol. Ther.* Oct. 2007, Figure 2b (D panel)

4. falsely reporting the results of H&E stained liver sections in R01 NS062054, Figure 6, by using the identical image to represent four (4) different experimental treatments of H&E stained liver sections; specifically the Respondent reused and relabeled one image to represent liver sections from mice that received either 1 or 10 injections, with or without the phiBT1 integrase plasmid.

The Respondent failed to take responsibility for the fabrication and falsification described in ORI's findings.

The following administrative actions have been implemented for a period of three (3) years, beginning on April 11, 2014:

(1) Respondent is debarred from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376 *et seq.*) of Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations''); and

(2) Respondent is prohibited from serving in any advisory capacity to PHS,

including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Donald Wright,

Acting Director, Office of Research Integrity.

[FR Doc. 2014–09434 Filed 4–24–14; 8:45 am]

BILLING CODE 4150–31–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 Reducing Youth Exposure to Alcohol Marketing, Special Interest Projects (SIP)14–009, Panel A, 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: 10:00 a.m.–5:00 p.m., May 19, 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 for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Reducing Youth Exposure to Alcohol Marketing, SIP14–009, Panel A, initial review.''

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@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.

[FR Doc. 2014–09373 Filed 4–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10517]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments must be received by June 24, 2014.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10517 The Predictive Learning Analytics Tracking Outcome (PLATO™)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new control number); *Title of Information Collection:* The Predictive Learning Analytics Tracking Outcome (PLATO™); *Use:* The Predictive Learning Analytics Tracking Outcome (PLATO™) is a web-based application tool that will serve as the centerpiece of the advanced analytics initiative with the Centers for Medicare & Medicaid Services (CMS) and Health Integrity, LLC, the National Benefit Integrity

Medicare Integrity Contractor (NBI MEDIC). Developed by Health Integrity, LLC and licensed for one of its contracts—the NBI MEDIC—PLATO™ utilizes a cutting-edge advanced analytics fraud detection process in conjunction with a state-of-the-art web-based user interface tool to present fraud and abuse lead information visually to Medicare Part D plan sponsors. Summary data, based on National Prescription Drug Event Data and actions from all Part D plan sponsors, is shared with law enforcement, CMS, NBI MEDIC, and Part D plan sponsors to review historic actions taken against providers who are enrolled in the Medicare Part D program, which will assist in detecting and preventing fraud, waste, and abuse. *Form Number:* CMS–10517 (OCN: 0938-New); *Frequency:* Monthly; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 1,550; *Total Annual Responses:* 1,550; *Total Annual Hours:* 18,600. (For policy questions regarding this collection contact Delois Newkirk at 410–786–1247).

Dated: April 22, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–09505 Filed 4–24–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–21 and CMS–21B]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 27, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–5806 *OR Email: OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Quarterly Children's Health Insurance Program (CHIP) Statement of Expenditures for the Title XXI Program (CMS–21) and State Children's Health Insurance Program Budget Report for the Title XXI Program State Plan Expenditures (CMS–21B); *Use:* Form CMS–21 and form CMS–21B provide CMS with the information necessary to issue quarterly grant awards, monitor current year expenditure levels, determine the allowability of state claims for reimbursement, develop Children's Health Insurance Program (CHIP) financial management information, provide for state reporting of waiver expenditures, and ensure that the federally established allotment is not exceeded. Further, these forms are necessary in the redistribution and reallocation of unspent funds over the federally mandated timeframes. *Form Number:* CMS–21 and CMS–21B (OCN: 0938–0731); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 448; *Total Annual Hours:* 7,840. (For policy questions regarding this collection contact Abraham John at 410–786–4519).

Dated: April 22, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–09507 Filed 4–25–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9085–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2014

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from January through March 2014, relating to the Medicare and

Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone Number
I CMS Manual Instructions	Ismael Torres	(410) 786-1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786-4481
III CMS Rulings	Tiffany Lafferty	(410)786-7548
IV Medicare National Coverage Determinations	Wanda Belle	(410) 786-7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786-6877
VI Collections of Information	Mitch Bryman	(410) 786-5258
VII Medicare –Approved Carotid Stent Facilities	Lori Ashby	(410) 786-6322
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	Marie Casey, BSN, MPH	(410) 786-7861
IX Medicare's Active Coverage-Related Guidance Documents	Lori Ashby	(410) 786-6322
X One-time Notices Regarding National Coverage Provisions	Lori Ashby	(410) 786-6322
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786-8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	Marie Casey, BSN, MPH	(410) 786-7861
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	Marie Casey, BSN, MPH	(410) 786-7861
XIV Medicare-Approved Bariatric Surgery Facilities	Kate Tillman, RN, MAS	(410) 786-9252
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	Stuart Caplan, RN, MAS	(410) 786-8564
All Other Information	Annette Brewer	(410) 786-6580

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS Web site or the appropriate data registries that are used as our resources. This information is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the Web site list provides more timely access for beneficiaries, providers, and suppliers. We also believe the Web site offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the Web sites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the Web site. These listservs avoid the need to check the Web site, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a Web site proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals*.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: April 16, 2014.

Kathleen Cantwell,

Director, Office of Strategic Operations and Regulatory Affairs.

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: May 3, 2013 (78 FR 26038) July 26, 2013 (78 FR 45233), November 8, 2013 (78 FR 67153) and January 31, 2014 (79 FR 5419). For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (January through March 2014)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Changes to the Laboratory National Coverage Determination (NCD) Edit Software for April 2014 (ICD-10) use CMS-Pub. 100-04, Transmittal No. 2852.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
83	Update to Pub. 100-01, Chapter 7 for Language-Only Changes for ICD-10 Test Case Specification Standard
Medicare Benefit Policy (CMS-Pub. 100-02)	
179	Manual Updates to Clarify Skilled Nursing Facility (SNF), Inpatient Rehabilitation Facility (IRF), Home Health (HH), and Outpatient (OPT) Coverage Pursuant to Jimmo vs. Sebelius
180	Aprepitant for Chemotherapy Induced Emesis Oral Anti-Nausea (Anti-Emetic) Drugs

181	Pub. 100-02 Language-Only Update for ICD-10 Admission Requirements Partial Hospitalization Services Coverage of Intravenous Immune Globulin for Treatment of Primary Immune Deficiency Diseases in the Home Coverage of Outpatient Rehabilitation Therapy Services (Physical Therapy, Occupational Therapy, and Speech-Language Pathology Services) Under Medical Insurance Documentation Requirements for Therapy Services Glaucoma Screening Determining Whether or Not the Beneficiary is at High Risk for Developing Colorectal Cancer Screening Pap Smears Limitations for Coverage
182	Implementing the Part B Inpatient Payment Policies from CMS-1599-F Medical and Other Health Services Furnished to Inpatients of Hospitals and Skilled Nursing Facilities Reasonable and Necessary Part A Hospital Inpatient Claim Denials Other Circumstances in Which Payment Cannot Be Made Under Part A Hospital Inpatient Services Paid Only Under Part B Medical and Other Health Services Furnished to SNF Patients Medical and Other Health Services Furnished to Inpatients of Participating Hospitals
Medicare National Coverage Determination (CMS-Pub. 100-03)	
159	Pub 100-03, Chapter 1, language-only update Foreword – Purpose for National Coverage Determinations (NCD) Manual Routine Costs in Clinical Trials (Effective July 9, 2007 Transcutaneous Electrical Nerve Stimulation (TENS) for Acute Post-Operative Pain Outpatient Hospital Pain Rehabilitation Programs Anesthesia in Cardiac Pacemaker Surgery Percutaneous Transluminal Angioplasty (PTA) (Various Effective Dates Below) Cardiac Pacemakers (Various Effective Dates) Cardiac Pacemaker Evaluation Services Transtelephonic Monitoring of Cardiac Pacemakers Electrocardiographic Services Cardiac Output Monitoring By Thoracic Electrical Bioimpedance (TEB) – Various Effective Dates Below Speech Generating Devices Cochlear Implantation (Effective April 4, 2005) Physician's Office Within an Institution - Coverage of Services and Supplies Incident to a Physician's Services Hospital and Skilled Nursing Facility Admission Diagnostic Procedures Hydrophilic Contact Lens for Corneal Bandage Photodynamic Therapy Ocular Photodynamic Therapy (OPT) - Effective April 3, 2013 Photosensitive Drugs Verteporfin - Effective April 3, 2013 Hydrophilic Contact Lenses Laproscopic Cholecystectomy

	Certain Drugs Distributed by the National Cancer Institute Stem Cell Transplantation (Various Effective Dates Below Anticancer Chemotherapy for Colorectal Cancer (Effective January 28, 2005) Abarelix for the Treatment of Prostate Cancer (Effective March 15, 2005) Erythropoiesis Stimulating Agents (ESAs) in Cancer and Related Neoplastic Conditions Inpatient Hospital Stays for the Treatment of Alcoholism Chemical Aversion Therapy for Treatment of Alcoholism Use of Visual Tests Prior to and General Anesthesia During Cataract Surgery Withdrawal Treatments for Narcotic Addictions Laser Procedures Diathermy Treatment Lumbar Artificial Disc Replacement (LADR) (Effective August 14, 2007) Induced Lesions of Nerve Tracts Electrical Nerve Stimulators Supplies Used in the Delivery of Transcutaneous Electrical Nerve Stimulation (TENS) and Neuromuscular Electrical Enteral and Parenteral Nutritional Therapy Nesiritide for Treatment of Heart Failure Patients (Effective March 2, 2006) Nebulized Beta Adrenergic Agonist Therapy for Lung Diseases – (Effective September 10, 2007 Screening PAP Smears and Pelvic Examinations for Early Detection of Cervical or Vaginal Cancer Computed Tomography (CT) Magnetic Resonance Imaging (MRI) (Various Effective Dates Below) Ultrasound Diagnostic Procedures (Effective May 22, 2007) FDG Positron Emission Tomography (PET) for Dementia and Neurodegenerative Diseases (Effective September 15, 2004) Positron Emission Tomography (PET) (FDG) for Oncologic Conditions - (Various Effective Dates) Digital Subtraction Angiography (DSA Single Photon Emission Computed Tomograph (SPECT) Percutaneous Image-Guided Breast Biopsy Sterilization Water Purification and Softening Systems Used in Conjunction with Home Dialysis Home Use of Oxygen Pulmonary Rehabilitation Services - (Effective September 25, 2007) Treatment of Psoriasis Treatment of Drug Abuse (Chemical Dependency) Wounds – (Effective July 1, 2004) Durable Medical Equipment Reference List (Effective May 5, 2005) Hospital Beds Infusion Pumps Obsolete or Unreliable Diagnostic Tests Intravenous Immune Globulin for the Treatment of Autoimmune Mucocutaneous Blistering Diseases

160	Medicare National Coverage Determination (NCD) for Beta Amyloid Positron Emission Tomography (PET) in Dementia and Neurodegenerative Disease Beta Amyloid Positron Emission Tomography in Dementia and Neurodegenerative Disease
161	National Coverage Determination (NCD) for Single Chamber and Dual Chamber Permanent Cardiac Pacemakers Single and Dual Chamber Permanent Cardiac Pacemakers
162	Fluorodeoxyglucose (FDG) Positron Emission Tomography (PET) for Solid Tumors Positron Emission Tomography (FDG PET) for Oncologic Conditions
163	Aprepitant for Chemotherapy Induced Emesis Oral Agents for Chemotherapy-Induced Emesis
164	Medicare National Coverage Determination (NCD) for Beta Amyloid Positron Emission Tomography (PET) in Dementia and Neurodegenerative Disease Beta Amyloid Positron Emission Tomography in Dementia and Neurodegenerative Disease
Medicare Claims Processing (CMS-Pub. 100-04)	
2850	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2851	Common Edits and Enhancements Modules (CEM) Code Set Update
2852	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for April 2014 (ICD-10)
2853	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) - April 2014
2854	New Waived Tests
2855	Remittance Advice Remark and Claims Adjustment Reason Code and Medicare Remit Easy Print and PC Print Update
2856	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2857	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
2858	Claim Status Category and Claim Status Codes Update
2859	Applying the Therapy Caps to Critical Access Hospitals
2860	Part B Claims Submission under the Indirect Payment Procedure (IPP)
2861	2014 Durable Medical Equipment Prosthetics, Orthotics, and Supplies Healthcare Common Procedure Coding System (HCPCS) Code Jurisdiction List
2862	2014 Durable Medical Equipment Prosthetics, Orthotics, and Supplies Healthcare Common Procedure Coding System (HCPCS) Code Jurisdiction List Where to Report Modifiers on the Hospital Part B Claim General Rules for Reporting Outpatient Hospital Services Billing of General Rules for Reporting Outpatient Hospital Services or Autologous Stem Cell Transplants Optional Method for Outpatient Services: Cost-Based Facility Services Plus 115 percent Fee Schedule Payment for Professional Services Billing and Payment in a Physician Scarcity Area (PSA) Optional Method for Outpatient Services: Cost-Based Facility Services Plus 115 percent Fee Schedule Payment for Professional Services Identifying Primary Care Services Eligible for the PCIP Bill Review for Partial Hospitalization Services Received in Community Mental Health Centers (CMHC) Line Item Date of Service Reporting for Partial Hospitalization
2863	April 2014 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
2864	Additional Data Reporting Requirements for Hospice Claims Data Required on the Institutional Claim to Medicare Contractor
2865	Changes to the Laboratory National Coverage Determination (NCD) Software for ICD-10 Codes
2866	Enforcement of the 5 day Payment Limit for Respite Care Under the Hospice Medicare Benefit
2867	Enforcement of the 5 day Payment Limit for Respite Care Under the Hospice Medicare Benefit
2868	Therapy Modifier Consistency Edits Application of Financial Limitations Discipline Specific Outpatient Rehabilitation Modifiers - All Claims Reporting of Service Units With HCPCS Rebilling Therapy Services for Hospital Inpatients
2869	Issued to a specific, audience not posted to Internet/ Intranet due to Sensitivity of Instruction
2870	Addition of New Fields and Expansion of Existing Model 1 Discount Percentage Field in the Inpatient Hospital Provider Specific File (PSF) and Addition of New Fields and Renaming Payment Fields in the Inpatient Prospective Payment System (IPPS) Pricer Output
2871	Medicare National Coverage Determination (NCD) for Beta Amyloid Positron Emission Tomography (PET) in Dementia and Neurodegenerative Disease Coverage for PET Scans for Dementia and Neurodegenerative Diseases
2872	National Coverage Determination (NCD) for Single Chamber and Dual Chamber Permanent Cardiac Pacemakers Billing Requirements for Cardiac Pacemakers: Single and Dual Chamber Cardiac Pacemakers: Single and Dual Chamber Policy Cardiac Pacemaker Healthcare Common Procedure Coding System (HCPCS Codes Cardiac Pacemaker Covered ICD-9/ICD-10 Diagnosis Codes Cardiac Pacemaker Claims Require the KX Modifier Cardiac Pacemaker Claims Without the KX modifier Cardiac Pacemaker Non Covered ICD-9/ICD-10 Diagnosis Codes Cardiac Pacemaker Claims Non Covered ICD-9/ICD-10 Diagnosis Codes: Denial Messages

2873	Fluorodeoxyglucose (FDG) Positron Emission Tomography (PET) for Solid Tumors Billing Requirements for CMS-Approved Clinical Trials and Coverage with Evidence Development Claims for PET Scans for Neurodegenerative Diseases, Previously Specified Cancer Indications, and All Other Cancer Indications Not Previously Specified Billing and Coverage Changes for PET Scans
2874	Medicare Claims Processing Pub. 100-04 Chapter 25 Update Form Locators 43-81 Uniform Billing with Form CMS-1450 Disposition of Copies of Completed Forms General Instructions for Completion of Form CMS-1450 for Billing Form Locators 1-15 Form Locators 31-41 Uniform Bill - Form CMS-1450
2875	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2876	Update to Pub 100-04, Claims Processing Manual, Chapter One Section 20.3/CMS No Longer Accepts Provider Requests For A Change of Fiscal Intermediary Solicitation of a Provider to Secure a Change of Fiscal Intermediary Communications CMS No Longer Accepts Provider Requests to Change Their Fiscal Intermediary
2877	Implementing the Part B Inpatient Payment Policies from CMS-1599-F Payment of Part B Services in the Payment Window for Outpatient Services Treated as Inpatient Services when Part A Payment Cannot Be Made Inpatient Part B Hospital Services Editing Of Hospital Part B Inpatient Services: Reasonable and Necessary Part A Hospital Inpatient Denials Editing Of Hospital Part B Inpatient Services: Other Circumstances in Which Payment Cannot Be Made under Part A Implantable Prosthetic Devices Indian Health Service/Tribal Hospital Inpatient Social Admits Payment Window for Outpatient Services Treated as Inpatient Services
2878	Correction CR - Advance Beneficiary Notice of Noncoverage (ABN), Form CMS-R-131 ABN Scope Home Health Agency Use of the ABN General Notice Preparation Requirements
2879	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2880	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2881	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2882	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2883	Aprepitant for Chemotherapy Induced Emesis Aprepitant for Chemotherapy Induced Emesis
	Billing and Payment Instructions for A/B MAC or FIs HCPCS Codes for Oral Anti-Emetic Drugs Claims Processing Jurisdiction for Oral Anti-Emetic Drugs Oral Anti-Emetic Drugs Used as Full Replacement for Intravenous Anti-Emetic Drugs as Part of a Cancer Chemotherapeutic Regimen
2884	Claim Status Category and Claim Status Codes Update
2885	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2886	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2887	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2888	Healthcare Provider Taxonomy Codes (HPTC) Update, April 2014
2889	Common Edits and Enhancements Modules (CEM) Code Set Update
2890	Health Professional Shortage Area (HPSA) Post-payment Review Process
2891	Instructions for Downloading the Medicare ZIP Code File for July 2014
2892	Quarterly Update to the Correct Coding Initiative (CCI) Edits, Version 20.2, Effective July 1, 2014
2893	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2894	April 2014 Update of the Hospital Outpatient Prospective Payment System (OPPS)
2895	Update to Pub. 100-04, Chapter 19 to Provide Language-Only Changes for ICD-10 and ASC X12 FI - Inpatient Acute Care - Medicare Part A - Claims Processing FI Payment Policy and Claims Processing
2896	Indirect Payment Procedure (IPP) - Payment to Entities that Provide Coverage Complementary to Medicare Part B
2897	Indirect Payment Procedure (IPP) - Payment to Entities that Provide Coverage Complementary to Medicare Part B
2898	Update to Pub. 100-04 Chapter 13 to Provide Language-Only Changes for Updating ICD-10 and ASC X12 ICD Coding for Diagnostic Tests Place of Service (POS) Instructions for the Professional Component (PC or Interpretation) and the Technical Component (TC) of Diagnostic Tests Special Billing Instructions for RHCs and FQHCs Payment Requirements Medicare Summary Notices (MSN), Reason Codes, and Remark Codes Billing Instructions Coverage for PET Scans for Dementia and Neurodegenerative Diseases Billing Requirements for CMS - Approved Clinical Trials and Coverage With Evidence Development Claims for PET Scans for Neurodegenerative Diseases, Previously Specified Cancer Indications, and All Other Cancer Indications Not Previously Specified Billing and Coverage Changes for PET Scans Effective for Services on or After April 3, 2009 Billing and Coverage Changes for PET Scans for Cervical Cancer Effective for Services on or After November 10, 2009 Billing and Coverage Changes for PET (NaF-18) Scans to Identify Bone Metastasis of Cancer Effective for Claims With Dates of Services on or After

	February 26, 2010 EMC Formats Payment Methodology and HCPCS Coding FI Payment for Low Osmolar Contrast Material (LOCM) (Radiology)
2899	Pub 100-04, Language Only Update for Chapters Five and Six for Conversion to ICD-10 Other Billing Situations Application of Financial Limitations Multiple Procedure Payment Reductions for Outpatient Rehabilitation Services Reporting of Service Units With HCPCS Coding Guidance for Certain CPT Codes - All Claims General Off-Site CORF Services Notifying Patient of Service Denial Billing for DME, Prosthetic and Orthotic Devices, and Surgical Dressings Addendum A - Chapter 5, Section 20.4 - Coding Guidance for Certain CPT Codes - All Claims Consolidated Billing Requirement for SNFs Billing SNF PPS Services Billing Procedures for Periodic Interim Payment (PIP) Method of Payment Total and Noncovered Charges Services in Excess of Covered Services Reporting Accommodations on Claims Bills with Covered and Noncovered Days Billing in Benefits Exhaust and No-Payment Situations Part B Outpatient Rehabilitation and Comprehensive Outpatient Rehabilitation Facility (CORF) Services – General
2900	April 2014 Integrated Outpatient Code Editor (I/OCE) Specifications Version 15.1
2901	April 2014 Update of the Ambulatory Surgical Center (ASC) Payment System
2902	April 2014 Update of the Ambulatory Surgical Center (ASC) Payment System
2903	April 2014 Update of the Hospital Outpatient Prospective Payment System (OPPS) Composite APCs HCPCS Codes Replacements Reporting and Charging Requirements When the Hospital Receives Full Credit for the Replaced Device against the Cost of a More Expensive Replacement Device Prior to January 1, 2014 Reporting Requirements When the Hospital Receives Partial Credit for the Replacement Device Prior to January 1, 2014 Medicare Payment Adjustment Prior to January 1, 2014 Reporting and Charging Requirements When a Device is Furnished Without Cost to the Hospital or When the Hospital Receives a Full or Partial Credit for the Replacement Device Beginning January 1, 2014 Medicare Payment Adjustment Beginning January 1, 2014 Billing and Payment for Observation Services Beginning January 1, 2008 Billing and Payment for Direct Referral for Observation Care Furnished

	Beginning January 1, 2008 Drugs, Biologicals, and Radiopharmaceuticals Reporting and Charging Requirements When a Device is Furnished Without Cost to the Hospital Prior to January 1, 2014
2904	Update to Pub. 100-04, Chapter 16 to Provide Language-Only Changes for Updating ICD-10 and ASC X12
2905	Update to Pub. 100-04, Chapters 7 and 8 to Provide Language-Only Changes for Updating ICD-10 and ASC X12 Billing Formats Data Elements Required on Claim for Monthly Capitation Payment Billing Billing for Enteral and Parenteral Nutritional Therapy as a Prosthetic Device Mammography Screening Hospital Services Calculation of the Basic Case-Mix Adjusted Composite Rate and the ESRD Prospective Payment System Rate In-Facility Dialysis Bill Processing Procedures Required Information for In-Facility Claims Paid Under the Composite Rate and the ESRD PPS Payment for Hemodialysis Sessions Ultrafiltration Lab Services Separately Billable ESRD Drugs Physician Billing Requirements to the Carrier Other Information Required on the Form CMS-1500 for Epoetin Alfa (EPO) Other Information Required on the Form CMS-1500 for Darbepoetin Alfa (Aranesp) General Intermediary Bill Processing Procedures for Method I Home Dialysis Services Physician's Services Furnished to a Dialysis Patient Away From Home or Usual Facility Physicians and Supplier (Nonfacility) Billing for ESRD Services/General Billing for Durable Medical Equipment (DME), Orthotic/Prosthetic Devices, and Supplies (including Surgical Dressings)
2906	Pub 100-04, Chapter 28 language-only update for ASC X12 version 5010, implementation of MACs, and MAC coordination with Medigap, Medicaid and Other Complementary Insurers. Medigap/ Definition and Scope Assignment of Claims and Transfer Policy Requirements as of July 2012 Completion of the Claim Form Form CMS-1500/ASC X12 837 Professional COB Form CMS-1450/ASC X12 837 Institutional COB MSN Messages Remittance Notice Messages Returned Medigap Notices Coordination of Medicare With Medigap and Other Complementary Health Insurance Policies Requests for Additional Information Release of Title XVIII Claims Information for Medigap Insurance Purposes by Providers

	Standard Medicare Charges for COB Records General Guidelines for A/B MAC (A, B, or HH) or DME MAC Transfer of Claims Information to Medigap Insurers Consolidation of the Claims Crossover Process Coordination of Benefits Agreement (COBA) Detailed Error Report Notification Process Coordination of Benefits Agreement (COBA) ASC X12 837 5010 Coordination of Benefits (COB) Flat File Errors Coordination of Benefits Agreement (COBA) Full Claim File Repair Process Coordination of Benefits Agreement (COBA) Eligibility File Claims Recovery Process Coordination of Benefits Agreement (COBA) Medigap Claim-Based Crossover Process Coordination of Benefits Agreement (COBA) ASC X12 837 Coordination of Benefits (COB) Mapping National Council for Prescription Drug Programs (NCPDP) Version D.0 Coordination of Benefits (COB) Mapping Requirements Electronic Transmission/ General Requirements Reserved Reserved Beneficiary Insurance Assignment Selection A/B MAC (A) Crossover Claim Requirements B MAC/DME MAC Crossover Claim Requirements Reserved Medigap Insurers Fraud Referral Outline of Complaint Referral Process Medigap Electronic Claims Transfer Agreements
2907	Clinical Laboratory Fee Schedule – Medicare Travel Allowance Fees for Collection of Specimens Travel Allowance
2908	Update to Pub. 100-04, Chapter 15 to Provide Language-Only Changes for Updating ICD-10 and ASC X12 Medical Conditions List and Instructions General Billing Guidelines Coding Instructions for Paper and Electronic Claim Forms Fiscal Intermediary Shared System (FISS) Guidelines A/MAC Bill Processing Guidelines Effective April 1, 2002, as a Result of Fee Schedule Implementation Definition
2909	Medicare Claims Processing Pub. 100-04 Chapter 31 Update Health Care Claim Status Category Codes and Health Care Claim Status Codes for Use with the Health Care Claim Status Request and Response ASC X12 Claim Status Request and Response Background Eligibility Connectivity Workflow Claim Status Request/Response Transaction Standard Transmission Requirements Batch Transactions Online Direct Data Entry Interactive/Online (Non-DDE)
	Summary of the ASC X12 276/277 Claim Status Request and Response Process for A/B Medicare Administrative Contractors, DME MACs, CEDI Flat File Translation Requirements Transmission Mode Health Care Eligibility Benefit Inquiry and Response Implementation
2910	Update to Pub. 100-04, Medicare Claims Processing Manual, Chapter 11 to Provide Language-Only Changes for Updating ICD-10 and ASC X12 Completing the Uniform (Institutional Provider) Bill (Form CMS 1450) for Hospice Election Data Required on the Institutional Claim to Medicare Contractor Medicare Summary Notice (MSN) Messages/ASC X12 Remittance Advice Adjustment Reason and Remark Codes
2911	Manual Updates to Clarify Skilled Nursing Facility Advanced Beneficiary Notice (SNF ABN) Requirements Pursuant to Jimmo vs. Sebelius Proper Denial Paragraphs
2912	April Update to the CY 2014 Medicare Physician Fee Schedule Database (MPFSDB)
2913	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2914	Health Professional Shortage Area (HPSA) Post-payment Review Process Post-payment Review
2915	Medicare National Coverage Determination (NCD) for Beta Amyloid Positron Emission Tomography (PET) in Dementia and Neurodegenerative Disease Coverage for PET Scans for Dementia and Neurodegenerative Diseases
2916	Calendar Year (CY) 2014 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment – REVISION
2917	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
Medicare Secondary Payer (CMS-Pub. 100-05)	
99	Apply Front-End Edits to Electronic Correspondence Referral System (ECRS) Files Submitted Via ECRS Web and PDR Assistance Request Action Code BN COBC Electronic Correspondence Referral System (ECRS)
100	The Medicare Contractors and the Shared Systems Shall Send the Correct Cost Avoided Indicator and Special Project Type to the Common Working File (CWF) so the Correct Savings is applied both to the Medicare Secondary Payer (MSP) Savings Report and the Originating Contractor
Medicare Financial Management (CMS-Pub. 100-06)	
230	Notice of New Interest Rate for Medicare Overpayments and Underpayments—2nd qtr Notification for FY 2014
231	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
232	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
Medicare State Operations Manual (CMS-Pub. 100-07)	
99	Revised State Operations Manual (SOM) Appendices A, I, L, and W

100	State Operations Manual (SOM) Appendix AA revisions for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID). Psychiatric Hospitals-Interpretive Guidelines and Survey Procedures/Title AA-Psychiatric Hospitals-Interpretive Guidelines and Survey Procedures/B112/§482.61(b)(2) Include a Medical History
101	State Operations Manual (SOM) Appendix I revisions for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) II-Survey Procedures and Interpretive Guidelines for Life Safety Code Surveys/Part II-Interpretive Guidelines/II. The Survey Tasks/Task 4-Information Gathering I-Survey Procedures and Interpretive Guidelines for Life Safety Code Surveys/Part II-Interpretive Guidelines/II. The Survey Tasks/Task 2-Entrance Conference/Onsite Preparatory Activities I-Survey Procedures and Interpretive Guidelines for Life Safety Code
102	State Operations Manual (SOM) Appendix Q revisions for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID). Q-Guidelines for Determining Immediate Jeopardy/Attachment C-Overview Recommended Key Components of Systemic Approach to Prevent Abuse and Neglect Q-Guidelines for Determining Immediate Jeopardy/Attachment A Q-Guidelines for Determining Immediate Jeopardy/VIII-Enforcement/ A-Termination for Title XIX-Only NFs, ICFs/IID
103	Revised State Operations Manual (SOM) Hospital Appendix A Facilities, supplies, and equipment must be maintained to ensure an acceptable level of safety and quality.
104	State Operations Manual (SOM) Appendix M revisions for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)
105	Revised Appendix A, Interpretive Guidelines for Hospitals, Condition of Participation: Quality Assessment and Performance Improvement
Medicare Program Integrity (CMS-Pub. 100-08)	
501	Complex Medical Review
502	Registration of Entities Using the Indirect Payment Procedure (IPP) Registration Letters Indirect Payment Procedure – Background Submission of Registration Applications Processing of Registration Applications Disposition of Registration Applications Revocation of Registration Changes of Information and Other Registration Transactions Indirect Payment Procedure
503	Inter-Jurisdictional Reassignments
504	Revision to Chapter 12 of the Medicare Program Integrity Manual - The Comprehensive Error Rate Testing Program. The Comprehensive Error Rate Testing (CERT) Program MAC Communication with the CERT Program Overview of the CERT Process Providing Sample Information to the CERT Review Contractor Providing Review Information to the CERT Review Contractor MAC Responsibility After Workload Transition Providing Feedback Information to the CERT Review Contractor
	Disputing/Disagreeing With a CERT Decision Voluntary Refunds Handling Appeals Resulting From CERT Initiated Denials CERT Appeal Results Disseminating CERT Information Error Rate Reduction Plans (ERRPs) Contacting Non-Responders & Documentation Requests Late Documentation Received by the CERT Review Contractor Handling Overpayments and Underpayments Resulting From the CERT
505	Removing Prohibition Requesting Additional Documentation During Prepayment and Postpayment Review
506	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
507	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
508	Supplemental Medical Review Contractor Overview of Program Integrity and Provider Compliance Medicare Improper Payment Reduction Efforts - Provider Compliance Types of Contractors Improper Payment Prevention Goals Applicable Program Integrity Manual Sections Performance Metrics Types of Claims for Which Contractors Are Responsible Quality of Care Issues and Potential Fraud Issues The MAC and SMRC Medical Review Program Goal of MAC and SMRC MR Program Provider Self Audits Coordination Among Contractors Maintaining the Confidentiality of MR Medical Records and Documents Medical Review Manager Contractor Medical Director (CMD)
509	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
00	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
00	None
Medicare Managed Care (CMS-Pub. 100-16)	
116	Conversion from ICD-9 to ICD-10 and from ASC X12 Version 4010 to 5010 Expanded Alternative Verification Methodology Calibration of the CMS-HCC Risk Adjustment Models Model Similarities Operations Sources of Data Format Diagnosis Cluster Valid Diagnosis Codes Health Insurance Portability and Accountability Act (HIPAA) Glossary of Terms Rules for Payment of "Significant Cost" NCDs and LCBs

	Special Rules for the September 2000 NCD on Clinical Trials Category B Investigational Device Exemption (IDE) Trials Adjustment to MA Payments Under the CMS-HCC Risk Adjustment Models Role and Responsibilities of Plan Sponsors
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
00	None
Demonstrations (CMS-Pub. 100-19)	
94	Affordable Care Act Bundled Payments for Care Improvement Initiative - Recurring File Updates Models 2 and 4 April 2014 Update
95	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
96	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
97	MAPCP Demonstration - Update for ICD-10
One Time Notification (CMS-Pub. 100-20)	
1332	Rescind and Replace of CR 8409: Reclassification of Certain Durable Medical Equipment from the Inexpensive and Routinely Purchased Payment Category to the Capped Rental Payment Category
1333	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1334	Occurrence Span Code 72; Identification of Outpatient Time Associated with an Inpatient Hospital Admission and Inpatient Claim for Payment
1335	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1336	Modifying the Daily Common Working File (CWF) to Medicare Beneficiary Database (MBD) File to Include Diagnosis Codes on the Health Insurance Portability and Accountability Act Eligibility Transaction System (HETS) 270/271 Transactions
1337	Encounter Data System Payer ID: Payer ID Creation for the Financial Alignment Demonstration for Medicare Medicaid Plans (MMPs)
1338	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1339	CWF Editing for Vaccines Furnished at Hospice – Correction
1340	Health Insurance Portability and Accountability Act (HIPAA) EDI Front End Updates for July 2014
1341	Changing Fiscal Intermediary Shared System (FISS) Action on Informational Unsolicited Responses (IURs) From Canceled Claims to Adjustments
1342	Reporting principal and interest amounts when refunding previously recouped money on the Remittance Advice (RA)
1343	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1344	Fee for Service Beneficiary Data Streamlining (FFS BDS)
1345	Implementing Operating Rule (OR)-Phase III ERA Or Dual Delivery of ERA and Paper Remittance
1346	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1347	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1348	Handling Bankrupt Suppliers within VMS
1349	Implementation of NACHA Operating Rules for Health Care Electronic Funds Transfers (EFT)
1350	Clarification of Remittance Advice Code Combination Reports Generated by Shared Systems
1351	Implementation of HIPAA Standards and Operating Rules for Health Care Electronic Funds Transfers
1352	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1353	International Classification of Diseases, 10th Revision (ICD-10) Testing with Providers through the Common Edits and Enhancements Module (CEM) and Common Electronic Data Interchange (CEDI).
1354	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1355	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1356	Modifying the Daily Common Working File (CWF) to Medicare Beneficiary Database (MBD) File to Include Diagnosis Codes on the Health Insurance Portability and Accountability Act Eligibility Transaction System (HETS) 270/271 Transaction
1357	International Classification of Diseases, 10th Revision (ICD-10) Testing with Providers through the Common Edits and Enhancements Module (CEM) and Common Electronic Data Interchange (CEDI)
1358	Implement Operating Rules-Phase III ERA EFT: CORE 360 Uniform Use of Claim Adjustment Reason Codes (CARC) and Remittance Advice Remark Codes (RARC) Rule-Update from CAQH CORE-Oct. 1, 2013 version 3.0.3
1359	The Coordination of Benefits Contractor (COBC) to Remove and No Longer Apply Federal Tax Information (FTI) Received through the Internal Revenue Service (IRS), Social Security Administration (SSA), Centers for Medicare and Medicaid Services (CMS) Medicare Secondary Payer (MSP) Data Match Program on the Common Working File (CWF).
1360	Implement Operating Rules-Phase III ERA EFT: CORE 360 Uniform Use of Claim Adjustment Reason Codes (CARC) and Remittance Advice Remark Codes (RARC) Rule-Update from CAQH CORE-Oct. 1, 2013 version 3.0.3
1361	Implementation of NACHA Operating Rules for Health Care Electronic Funds Transfers (EFT)
1362	Rescind and Replace of CR 8409: Reclassification of Certain Durable Medical Equipment from the Inexpensive and Routinely Purchased Payment Category to the Capped Rental Payment Category
1363	Implement Operating Rules-Phase III ERA EFT: CORE 360 Uniform Use of Claim Adjustment Reason Codes (CARC) and Remittance Advice Remark Codes (RARC) Rule-Update from CAQH CORE-Feb. 1, 2014 version 3.0.4
1364	Pioneer Accountable Care Organization (ACO) Payment Adjustment
Medicare Quality Reporting Incentive (CMS-Pub. 100-22)	
19	Electronic Prescribing (eRx) Incentive Supplemental Payment
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
2	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction

Addendum II: Regulation Documents Published in the Federal Register (January through March 2014)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-1Q14QPU.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (January through March 2014)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we list only the specific updates that have occurred in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
PET (FDG) for Solid Tumors	NCD220.6.17	TR162	02/06/2014	06/11/2013
Beta Amyloid PET in Dementia/ Neurodenerative Disease	NCD 220.6.18	TN160	02/06/2014	09/27/2013
Single-Chamber/Dual-Chamber Permanent Cardiac Pacemakers	NCD20.8	TN 161	02/06/2014	08/13/2013
Aprepitant for Chemotherapy-Induced Emesis	NCD110.18	TN163	02/21/2014	05/29/2013

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (January through March 2014)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization

process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
G130288	Medtronic Activa PC+S System Cook Custom Aortic Endograft and Zenith t-Branch Endovascular Graft	01/03/2014
G130292	EXOGEN Ultrasound Bone Healing System	01/08/2014
G130300	Focused Ultrasound Stimulator For Aesthetic Use	01/22/2014
G130132	Therapy Cool Flex Ablation Catheter	01/22/2014
G130237	Embosphere Microspheres	01/24/2014
G130303	Concert Implant	01/30/2014
G140003	Essure System for Permanent Birth Control	01/31/2014
G130248	SIR-Spere Microspheres	01/31/2014
G130228	SIR-Spheres Microspheres Brachytherapy Device Plus Delivery	01/31/2014
G130127	VIDI ICV Filter System	02/04/2014
G140006	Medtronic Tined Leads (Models 3889 and 3093) and the Medtronic Restoreprime Neurostimulatory (Model 37701)	02/04/2014
G130244	LUTONIX 035 Drug Coated Balloon PTA Catheter	02/06/2014
G140001	Nucleus 24 Auditory Brainstem Implant (ABI)	02/07/2014
G130245	Micra Transcatheter Pacemaker System Model MC1VR01	02/10/2014
G130278	Embozene Microspheres	02/11/2014
G130290	BrainSonix BX Pulsar 1001 Focused Ultrasonic	02/12/2014
G130276	Sentinel Cerebral Protection System	02/14/2014
G130205	Embosphere	02/14/2014
G130172	Tigerpaw System II	02/21/2014
G140014	RMY Contact Lens	02/21/2014
G140013	FAME 3	02/21/2014
G130190	Vascular Embolization Device	02/26/2014
BB15909	Emergency Use - Treatment of using Haploidentical Parental Adenovirus Specific T-Cells using the CliniMACS System (Cytokine Capture Reagent, Interferon-gamma)	02/27/2014
G130213	Vascular Sealing System	02/28/2014
G140019	Implany, Cochlear	03/05/2014
G140020	Dako PD-L1 IHC pharmDx kit	03/06/2014
G140021	Toronto EVLP System	03/06/2014
G140025	COSTATUS SYSTEM	03/12/2014
G130223	Concentric Medical, Inc	03/20/2014
G130287	Microtransponder, Inc	03/20/2014
G130034	BIOFREEDOM Drug Coated Coronary Stent System	03/25/2014
G140028	Teosyal RHA Global Action (TP30L), Teosyal RHA Deep Lines (TP27L)	03/26/2014
G140030	Best-CLI	03/27/2014
G140032	MolecularMD MRDX BCR-ABL TEST	03/27/2014

Addendum VI: Approval Numbers for Collections of Information (January through March 2014)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact Mitch Bryman (410-786-5258).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (January through March 2014)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Lori Ashby (410-786-6322).

Facility	Provider Number	Effective Date	State
The following facility is a new listing for this quarter.			
Capital Regional Medical Center 2626 Capital Medical Boulevard Tallahassee, FL 32308	100254	02/27/2014	FL
Berwick Hospital Center 701 E. 16th Street Berwick, PA 18603	1316919699	02/27/2014	PA
Texas Heart Health and Vascular Hospital Arlington 811 Wright Street Arlington, TX 76012	670071	02/27/2014	TX
Doctors Hospital 3651 Wheeler Road Augusta, GA 30909	110177	03/05/2014	GA
Baylor Medical Center at McKinney 5252 W. University Drive. Hwy 380 At Lake Forest Drive McKinney, TX 75071	670082	03/24/2014	TX

Facility	Provider Number	Effective Date	State
Editorial changes (shown in bold) were made to the facilities listed below.			
FROM: Southwest Washington Medical Center **TO: PeaceHealth Southwest Medical Center** 400 N.E. Mother Joseph Place Vancouver, WA 98668 P.O. Box 1600	500050	05/26/2005	WA
Covenant Healthcare **900 Cooper Avenue** **Saginaw, MI 48602**	230070	06/22/2006	MI

Addendum VIII:
American College of Cardiology's National Cardiovascular Data Registry Sites (January through March 2014)

Addendum VIII includes a list of the American College of Cardiology's National Cardiovascular Data Registry Sites. We cover implantable cardioverter defibrillators (ICDs) for certain clinical indications, as long as information about the procedures is reported to a central registry. Detailed descriptions of the covered indications are available in the NCD. In January 2005, CMS established the ICD Abstraction Tool through the Quality Network Exchange (QNet) as a temporary data collection mechanism. On October 27, 2005, CMS announced that the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD Registry satisfies the data reporting requirements in the NCD. Hospitals needed to transition to the ACC-NCDR ICD Registry by April 2006.

Effective January 27, 2005, to obtain reimbursement, Medicare NCD policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare NCD Manual, which is on the CMS website at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the ACC-NCDR ICD registry. Therefore, for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. The entire list of facilities that participate in the ACC-NCDR ICD registry can be found at www.ncdr.com/webncdr/common

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available by accessing our website and clicking on the link for the American College of Cardiology's National Cardiovascular Data Registry at: www.ncdr.com/webncdr/common. For questions or additional information, contact Marie Casey, BSN, MPH (410-786-7861).

Facility	City	State
The following facilities are new listings for this quarter.		
Carolina Pines Regional Medical Center	Hartsville	SC
Charlotte Regional Medical Center	Punta Gorda	FL
Town & Country Hospital	Tampa	FL
Crossgates River Oaks Hospital	Brandon	MS
St. Cloud Regional Medical Center	Saint Cloud	FL
Summit Medical Center	Van Buren	AR
Saint Mary's Mercy Medical Center	Grand Rapids	MI
Fisher-Titus Medical Center	Norwalk	OH
University Medical Center	Lebanon	TN
Geisinger Community Medical Center	Scranton	PA
Tulare District Hospital	Tulare	CA
Lake Norman Regional Medical Center	Mooresville	NC
Methodist Mansfield Medical Center	Mansfield	TX
University of Texas Health Science Center at Tyler	Tyler	TX
Mercy Hospital Ada	Ada	OK
Hospital totalCor	Sao Paulo	Brazil
St. Luke's Warren Campus	Phillipsburg	NJ
Castle Rock Adventist	Castle Rock	CO
New York Presbyterian - Weill Cornell Medical Center	New York	NY
Santa Rosa Medical Center	Milton	FL
Shands Lake Shore Regional Medical Center	Lake City	FL
Bayfront Health Spring Hill	Spring Hill	FL
Williamson Memorial Hospital	Williamson	WV
Pine Creek Medical Center	Dallas	TX
New York Presbyterian Hospital-Columbia	New York	NY
Central Carolina (TENET)	Sanford	NC
Saint Vincent Medical Center North	Little Rock	AR
Children's Hospital of Los Angeles	Los Angeles	CA
Northbank Surgical Center	Salem	OR
Children's Hospital of Philadelphia	Philadelphia	PA
Mary Lanning Healthcare	Hastings	NE
Mercy Tiffin Hospital	Tiffin	OH
Wilson Medical Center	Wilson	NC
Signature Healthcare Brockton Hospital	Brockton	MA
Norton Brownsboro Hospital	Louisville	KY

Facility	City	State
The following facilities are new listings for this quarter.		
Walnut Hill Medical Center	Dallas	TX
Coronado Surgery Center	Henderson	NV
Eastern New Mexico Medical Center	Roswell	NM
Valley View Hospital	Glenwood Springs	CO
The Heart Hospital Baylor Denton	Denton	TX
Baylor Medical Center Carrollton	Carrollton	TX
Temecula Valley Hospital	Temecula	CA
St Mary's Medical Center	Blue Springs	MO
The following facilities are terminated as of this quarter.		
Oconee Regional Medical Center	Milledgeville	GA
Charlotte Regional Medical Center	Punta Gorda	FL
Crossgates River Oaks Hospital	Brandon	MS
Shands Lake Shore Regional Medical Center	Lake City	FL

Addendum IX: Active CMS Coverage-Related Guidance Documents (January through March 2014)

There were no CMS coverage-related guidance documents published in the January through March 2014 quarter. To obtain the document, visit the CMS coverage website at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=23. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (January through March 2014)

There were no special one-time notices regarding national coverage provisions published in the January through March 2014 quarter. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum XI: National Oncologic PET Registry (NOPR) (January through March 2014)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the January through March 2014 quarter. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (January through March 2014)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved facilities that meet our standards in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact Marie Casey, BSN, MPH (410-786-7861).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Moses H. Cone Memorial Hospital 1200 North Elm Street Greensboro NC 27401-1020	340091	01/08/2014	NC
Mercy General Hospital 4001 J Street Sacramento, CA 95819	050071	02/12/2014	CA

Geisinger Wyoming Valley Medical Center 1000 East Mountain Drive Wilkes Barre, PA 18711	39-0270	02/26/2014	PA
Tulane University Hospital and Clinic 1415 Tulane Avenue New Orleans, LA 70112	190176	03/15/2013	LA
Editorial changes (shown in bold) were made to the facilities listed below.			
FROM: Clarian Health Partners, Inc. (Methodist Hospital) **TO: Indiana University Health, Inc.** 1701 N. Senate Boulevard Indianapolis, IN 46206	150056	11/25/2003	IN

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (January through March 2014)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the January through March 2014 quarter. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Marie Casey, BSN, MPH (410-786-7861).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (January through March 2014)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the January through March 2014 period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Kate Tillman, RN, MAS (410-786-9252).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (January through March 2014)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the January through March 2014 quarter.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

[FR Doc. 2014–09288 Filed 4–24–14; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1466–N]

Medicare Program: Notice of Two Membership Appointments to the Advisory Panel on Hospital Outpatient Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces two new membership appointments to the Advisory Panel on Hospital Outpatient Payment (the Panel). The two new appointments to the Panel will each serve a 4-year period. The new members will have terms that begin on February 16, 2014 and continue through February 15, 2018. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services concerning the clinical integrity of the Ambulatory Payment Classification groups and their relative payment weights. The Panel also addresses and makes recommendations regarding supervision of hospital outpatient services. The advice provided by the Panel will be considered as we prepare the annual updates for the hospital outpatient prospective payment system.

FOR FURTHER INFORMATION CONTACT: For additional information on the Panel meeting dates, agenda topics, copy of the charter, as well as updates to the Panel's activities, search our Internet Web site: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html*. For other information regarding the Panel, contact Carol Schwartz, the Designated Federal Officer (DFO) at CMS, Center for Medicare, Hospital and Ambulatory Policy Group, Division of Outpatient Care, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850, phone (410) 786–3985.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) (42 U.S.C. 1395l(t)(9)(A)) and section 222 of the Public Health Service Act (PHS Act) (42 U.S.C. 217a) to consult with an expert outside advisory panel on the clinical integrity of the Ambulatory Payment Classification groups and relative payment weights, which are major elements of the Medicare Hospital Outpatient Prospective Payment System (OPPS), and the appropriate supervision level for hospital outpatient services. The Panel is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels. The Panel Charter provides that the Panel shall meet up to 3 times annually. We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the OPPS for the following calendar year.

The Panel shall consist of a chair and up to 19 members who are full-time employees of hospitals, hospital systems, or other Medicare providers. The Secretary or a designee selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations. New appointments are made in a manner that ensures a balanced membership under the FACA guidelines.

The Panel presently consists of the following members and a Chair.

- Edith Hambrick, M.D., J.D., Chair, CMS Medical Officer.
- Karen Borman, M.D., FACS.
- Kari S. Cornicelli, C.P.A., FHFMA.
- Brian D. Kavanagh, M.D., MPH.
- Scott Manaker, M.D., Ph.D.
- John Marshall, CRA, RCC, CIRCC, RT(R), FAHRA.
- Jim Nelson, M.B.A., C.P.A., FHFMA.
- Leah Osbahr, M.A., MPH.
- Jacqueline Phillips.
- Traci Rabine.
- Michael Rabovsky, M.D.
- Marianna V. Spanaki-Varela, MD, Ph.D., M.B.A.
- Gale Walker.
- Kris Zimmer.

II. Provisions of the Notice

We published a notice in the **Federal Register** on November 1, 2013, entitled ''Medicare Program; Solicitation of Five Nominations to the Advisory Panel on Hospital Outpatient Payment (HOP, the Panel)'' (78 FR 65660). The notice solicited nominations for five new members to fill the vacancies on the Panel beginning September 30, 2013. As a result of that notice, we are announcing two new members to the Panel. The Panel currently consists of 15 members. The two new Panel members appointments are for 4-year terms beginning on February 16, 2014.

New Appointments to the Panel

The two new members of the Panel with terms beginning on February 16, 2014 and continuing through February 15, 2018 are as follows:

- Wendy Resnick, FHFMA.
- Johnathan Pregler, M.D.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Dated: April 17, 2014.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–09289 Filed 4–24–14; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0555]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for the tracking of medical devices.

DATES: Submit either electronic or written comments on the collection of information by June 24, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of

information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Device Tracking—21 CFR Part 821 (OMB Control Number 0910–0442)—Extension

Section 211 of the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105–115) became effective on February 19, 1998. FDAMA amended the previous medical device tracking provisions under section 519(e)(1) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360i(e)(1) and (e)(2)) that were added by the Safe Medical Devices Act of 1990 (SMDA) (Pub. L. 101–629). Unlike the tracking provisions under SMDA, which required tracking of any medical device meeting certain criteria, FDAMA allows FDA discretion in applying tracking provisions to medical devices meeting certain criteria and provides that tracking requirements for medical devices can be imposed only after FDA issues an order. In the **Federal Register** of February 8, 2002 (67 FR 5943), FDA issued a final rule that conformed existing tracking regulations to changes in tracking provisions effected by FDAMA under part 821 (21 CFR part 821).

Section 519(e)(1) of the FD&C Act, as amended by FDAMA, provides that FDA may require by order that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''), or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility.

Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary) use the data to: (1) Expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, the regulations include provisions for: (1) Exemptions and variances; (2) system and content requirements for tracking; (3) obligations of persons other than device manufacturers, e.g., distributors; (4) records and inspection requirements; (5) confidentiality; and (6) record retention requirements.

Respondents for this collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

The annual hourly burden for respondents involved with medical device tracking is estimated to be 615,380 hours per year. The burden estimates cited in tables 1, 2, and 3 of this document are based on the number of device tracking orders issued in the last 3 years.

This regulation also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by Office of Management and Budget under the PRA (44 U.S.C. 3501–3520). The collections of information found in §§ 821.2(b), 821.25(e), and 821.30(e) have been approved under OMB control number 0910–0183.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR Part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Discontinuation of business—821.1(d)	1	1	1	1	1
Exemption or variance—821.2 and 821.30(e)	1	1	1	1	1
Notification of failure to comply—821.25(d)	1	1	1	1	1
Multiple distributor data—821.30(c)(2)	1	1	1	1	1
Total					4

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR Part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Tracking information—821.25(a)	12	1	12	76	912
Record of tracking data—821.25(b)	12	46,260	555,120	1	555,120
Standard operating procedures—821.25(c) [2]	12	1	12	63	756
Manufacturer data audit—821.25(c)(3)	12	1,124	13,488	1	13,488
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	22,000	1	22,000	1	22,000
Total					592,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One-time burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR Part	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Acquisition of tracked devices and final distributor data—821.30(a) and (b)	22,000	1	22,000	1	22,000
Multiple distributor data and distributor tracking records—821.30(c)(2) and (d)	1,100	1	1,100	1	1,100
Total					23,100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 21, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09467 Filed 4–24–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Preparation for International Cooperation on Cosmetics Regulation; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA or we) is announcing a public meeting entitled, ''International Cooperation on Cosmetics Regulation (ICCR)—Preparation for ICCR–8 Meeting.'' The purpose of the meeting is to invite public input on various topics pertaining to the regulation of cosmetics. We may use this input to help us prepare for the ICCR–8 meeting that will be held in Canada from July 8 to 10, 2014.

Date and Time: The meeting will be held on June 4, 2014, from 2 p.m. to 4 p.m.

Location: The meeting will be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., Wiley Auditorium (first floor), College Park, MD 20740.

Contact Person: If you intend to participate in the meeting, you should register with Maria Rossana (Rosemary) Cook, Office of Cosmetics and Colors, Food and Drug Administration, 4300 River Rd., College Park, MD 20740, email: *maria.cook@fda.hhs.gov* or FAX: 301–436–2975.

Registration and Requests for Oral Presentations: Send registration information (including your name, title, firm name, address, telephone number, fax number, and email address), written material, and requests to make an oral presentation, to the contact person by May 20, 2014.

If you need special accommodations due to a disability, please contact Maria Rossana (Rosemary) Cook (see *Contact Person*) by May 28, 2014.

SUPPLEMENTARY INFORMATION: You may present proposals for future ICCR agenda items, data, information, or views orally or in writing, on issues pending at the public meeting. Time allotted for oral presentations may be limited to 10 minutes or less for each presenter. If you wish to make an oral presentation, you should notify the contact person by May 20, 2014, and submit a brief statement of the general nature of the evidence or arguments that you wish to present, your name, address, telephone number, fax number, and email address, and indicate the approximate amount of time you need to make your presentation.

Transcripts: As soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It also may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20850. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. You should send written requests for a hardcopy or CD–ROM transcript to the Division of Freedom of Information, (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

The Purpose of the Multilateral Framework on the ICCR: The purpose of the multilateral framework on the ICCR is to pave the way for the removal of regulatory obstacles to international trade while maintaining global consumer protection.

ICCR is a voluntary international group of cosmetics regulatory authorities from the United States, Japan, the European Union, and Canada. These regulatory authority members will enter into constructive dialogue with their relevant cosmetics industry trade associations and public advocacy groups. Currently, the ICCR members are: Health Canada; the European Directorate General for Health and Consumers; the Ministry of Health,

Labor and Welfare of Japan; and the U.S. Food and Drug Administration. All decisions made by consensus will be compatible with the laws, policies, rules, regulations, and directives of the respective administrations and governments. Members will implement and/or promote actions or documents within their own jurisdictions and seek convergence of regulatory policies and practices. Successful implementation will need input from stakeholders.

We will make the agenda for the public meeting available on the Internet at: *http://www.fda.gov/Cosmetics/InternationalActivities/ConferencesMeetingsWorkshops/InternationalCooperationonCosmeticsRegulationsICCR/default.htm.* Depending on the number of requests for oral presentations, we intend to have an agenda available by May 30, 2014. We may use the information that you provide to us during the public meeting to help us prepare for the July 8 to 10, 2014, ICCR–8 meeting.

Dated: April 21, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09465 Filed 4–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0396]

Public Meeting on Patient-Focused Drug Development for Neurologic Manifestations of Inborn Errors of Metabolism

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public meeting and an opportunity for public comment on Patient-Focused Drug Development for neurologic manifestations of inborn errors of metabolism. Patient-Focused Drug Development is part of FDA's performance commitments made as part of the fifth authorization of the Prescription Drug User Fee Act (PDUFA V). The public meeting is intended to allow FDA to obtain patient perspectives on the impact of neurologic manifestations of inborn errors of metabolism on daily life as well as patient views on treatment approaches for neurologic manifestations of inborn errors of metabolism.

DATES: The public meeting will be held on June 10, 2014, from 9 a.m. to 1 p.m. Registration to attend the meeting must be received by May 27, 2014 (see the **SUPPLEMENTARY INFORMATION** section for instructions).

ADDRESSES: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security checks will be performed. For more information on parking and security procedures, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Submit either electronic or written comments by August 11, 2014. Submit electronic comments to *www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FDA will post the agenda approximately 5 days before the meeting at:*http://www.fda.gov/Drugs/NewsEvents/ucm387057.htm.*

FOR FURTHER INFORMATION CONTACT: Pujita Vaidya, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1170, Silver Spring, MD 20993, 301–796–0684, FAX: 301–796–0684, email: *Pujita.Vaidya@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on Patient-Focused Drug Development

FDA has selected neurologic manifestations of inborn errors of metabolism as the focus of a public meeting under Patient-Focused Drug Development, an initiative that involves obtaining a better understanding of patients' perspectives on the severity of the disease and the available therapies for the condition. Patient-Focused Drug Development is being conducted to fulfill FDA performance commitments that are part of the authorization of PDUFA V under Title I of the Food and Drug Safety and Innovation Act (FDASIA) (Pub. L. 112–144). The full set of performance commitments is available on the FDA Web site at *http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf.*

FDA committed to obtain the patient perspective on 20 disease areas during the course of PDUFA V. For each disease area, the Agency will conduct a public meeting to discuss the disease and its impact on patients' daily lives, the types of treatment benefit that matter most to patients, and patients' perspectives on the adequacy of the available therapies. These meetings will include participation of FDA review divisions, the relevant patient communities, and other interested stakeholders.

On April 11, 2013, FDA published a notice (78 FR 08441) in the **Federal Register** announcing the disease areas for meetings in fiscal years (FYs) 2013–15, the first 3 years of the 5-year PDUFA V timeframe. The Agency used several criteria outlined in the April 11, 2013, notice to develop the list of disease areas. FDA obtained public comment on the Agency's proposed criteria and potential disease areas through a public docket and a public meeting that was convened on October 25, 2012. In selecting the set of disease areas, FDA carefully considered the public comments received and the perspectives of review divisions at FDA. By the end of FY 2015, FDA will initiate a second public process for determining the disease areas for FY 2016–17. More information, including the list of disease areas and a general schedule of meetings, is posted on FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm.*

II. Public Meeting Information

A. Purpose and Scope of the Meeting

The purpose of this Patient-Focused Drug Development meeting is to obtain input on the symptoms and other impacts of neurologic manifestations of inborn errors of metabolism that matter most to patients, as well as perspectives on current approaches to treating neurologic manifestations of inborn errors of metabolism. FDA expects that this information will come directly from patients, caregivers, and patient advocates. Inborn errors of metabolism include a range of genetic disorders in which the body has an enzyme deficiency, which causes buildup of harmful metabolites. Examples of inborn errors of metabolism include phenylketonuria, lysosomal storage disorders, Wilson disease, and many others. Symptoms vary depending on the condition and can be acute or chronic. Neurologic symptoms are common. For most inborn errors of

metabolism, a cure does not exist, and treatment focuses on prevention and management of signs and symptoms.

The questions that will be asked of patients and patient stakeholders at the meeting are listed in this section, organized by topic. For each topic, a brief initial patient panel discussion will begin the dialogue and will be followed by a facilitated discussion inviting comments from other patient and patient stakeholder participants. In addition to input generated through this public meeting, FDA is interested in receiving patient input addressing these questions through written comments, which can be submitted to the public docket (see **ADDRESSES**).

For the purposes of this Patient-Focused Drug Development Meeting, FDA is interested in hearing from patients specifically about the neurologic/neuropsychological aspects of inborn errors of metabolism.

For context, please indicate if you are commenting on behalf of a child or loved one who has an inborn error of metabolism. If you are commenting on behalf of a child or loved one, please answer the following questions as much as possible from the patient's perspective.

Topic 1: Disease Signs, Symptoms, and Daily Impacts That Matter Most to Patients

1. Of all the signs or symptoms that you/your child experiences because of the condition, which 1–3 neurologic/neuropsychological signs and/or symptoms have the most significant impact on your/your child's life? (Examples may include seizures, decreased muscle tone, sensory issues, etc.)

2. Are there specific activities that are important to you/your child but that you/your child cannot do because of these neurologic/neuropsychological signs or symptoms? (Examples of activities may include sleeping through the night, daily hygiene, going up the stairs, etc.)

3. How have your/your child's neurologic/neuropsychological signs or symptoms changed over time?

Topic 2: Patient Perspectives on Current Approaches to Treating Neurologic Manifestations of Inborn Errors of Metabolism

1. What are you/your child currently doing to help treat the condition or its signs/symptoms? (Examples may include prescription medicines, herbal therapies, acupuncture, over-the-counter products, and other therapies including nondrug therapies such as diet modification.)

How well does this current treatment regimen treat the neurological symptoms of your/your child's disease? For example, how well do the treatments improve your/your child's ability to do specific activities?

2. Assuming there is no complete cure for your/your child's condition, what specific attributes would you look for in an ideal treatment for the condition?

3. The process of informed consent is an important way for researchers to communicate the purpose of a clinical trial and the potential benefits and risks of the trial so that people can make an informed decision about whether to participate. Informed consent also ensures that parents are fully informed and are given opportunities to ask questions about the clinical trial. In addition to informed consent from parents, assent from children may also be needed. Assent is the term used to describe when a child agrees to be in a clinical trial. Among other considerations, children should be old enough to understand basic facts about the clinical trial in order to provide assent to participate.

In the informed consent process, what are important considerations to take into account in cases when the potential participant is a child? For example, how should the informed consent clearly communicate to the patient the potential benefits and risks of a study?

B. Meeting Attendance and Participation

If you wish to attend this meeting, visit *http://iempatientfocused.eventbrite.com*. Please register by May 27, 2014. Those who are unable to attend the meeting in person can register to view a live Webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via the Webcast. Your registration will also contain your complete contact information, including name, title, affiliation, address, email address, and phone number. Seating will be limited, so 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. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. If you need special accommodations because of disability, please contact Pujita Vaidya (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

Patients who are interested in presenting comments as part of the initial panel discussions will be asked to indicate in their registration which topic(s) they wish to address. They will be asked to send a brief summary of responses to the topic questions to *PatientFocused@fda.hhs.gov*. Panelists will be notified of their selection a few days after the close of registration on May 27, 2014. FDA will try to accommodate all patients and patient advocate participants who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

Comments: Regardless of attendance at the public meeting, you can submit electronic or written responses to the questions pertaining to topics 1 and 2 to the public docket (see **ADDRESSES**) by August 11, 2014. 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*.

Transcripts: As soon as a transcript is available, FDA will post it at *http://www.fda.gov/Drugs/NewsEvents/ucm387057.htm*.

Dated: April 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09468 Filed 4–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 16, 2014, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *PDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committees will discuss the risk of serious neuropsychiatric adverse events with CHANTIX (varenicline tartrate) tablets, NDA 21928, Pfizer, Inc., and discuss options for addressing this risk.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 1, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 23, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 24, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09460 Filed 4–23–14; 11:15 am]

BILLING CODE 4160–01–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, Maryland 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 March 1, 2014, through March 31, 2014. 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: April 19, 2014.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Dawn Somelofski on behalf of A.S., Albany, New York, Court of Federal Claims No: 14–0169V
2. Mikayla Rose Burchill, St. Charles, Illinois, Court of Federal Claims No: 14–0176V
3. Matthew Andrews, Cincinnati, Ohio, Court of Federal Claims No: 14–0181V
4. Thomas and Ashley Saunders on behalf of T.A.S., Evans, Georgia, Court of Federal Claims No: 14–0184V
5. Michelle Schneider, Washington District of Columbia, DC, Court of Federal Claims No: 14–0185V
6. Jana Wilkes on behalf of D.N.T., Fort Worth, Texas, Court of Federal Claims No: 14–0186V
7. Itza Mejia on behalf of Brenda Mejia, Deceased, Downey, California, Court of Federal Claims No: 14–0189V
8. Andy De' on behalf of Annapoorna ''Uma'' De', Irving, Texas, Court of Federal Claims No: 14–0190V
9. Kyle and Shannon Carda on behalf of G.J.C., Sioux Falls, South Dakota, Court of Federal Claims No: 14–0191V
10. Bruce McDonald, Riverdale, Georgia, Court of Federal Claims No: 14–0192V
11. Miranda Hoffman, Tuscaloosa, Alabama, Court of Federal Claims No: 14–0195V
12. Marie Verdier, Georgetown, Delaware, Court of Federal Claims No: 14–0196V
13. Martin D. Casper, San Diego, California, Court of Federal Claims No: 14–0197V
14. Stephen Wallen, Colorado Springs, Colorado, Court of Federal Claims No: 14–0209V
15. Alex Joiner, Guy C. Joiner, Dwain Joiner, Dorothy Jean Disher, Linda Guagliardo, and Robbin Thompson, on behalf of Henrietta Duplessis Joiner, Deceased, New Orleans, Louisiana, Court of Federal Claims No: 14–0211V
16. Caylee Harrington, Tempe, Arizona, Court of Federal Claims No: 14–0212V
17. Melodie Rose on behalf of Allison Rose, Mountain View, California, Court of Federal Claims No: 14–0215V
18. Damien Dufour, Lewiston, Maine, Court of Federal Claims No: 14–0219V
19. Michael Foy, Mayfield, Kentucky, Court of Federal Claims No: 14–0220V
20. Cynthia Winward on behalf of James Winward, Yuba City, California, Court of Federal Claims No: 14–0223V
21. Paul Drobbin, West Long Branch, New Jersey, Court of Federal Claims No: 14–0225V
22. Bridget Sullivan on behalf of James Sullivan, Granard, County Longford, Ireland, Court of Federal Claims No: 14–0226V
23. Krystyn Snyder, Pittsburgh, Pennsylvania, Court of Federal Claims No: 14–0227V
24. Janice D. Whitfield, Kentwood, Michigan, Court of Federal Claims No: 14–0231V
25. Lisa Brown and Christopher Brown on behalf of Z.B., Torrington, Connecticut, Court of Federal Claims No: 14–0234V
26. Victoria Nifakos, Loxahatchee, Florida, Court of Federal Claims No: 14–0236V
27. Linda Leggett, Hattiesburg, Mississippi, Court of Federal Claims No: 14–0238V
28. James Schutte on behalf of Carolyn Schutte, Excelsior Springs, Missouri, Court of Federal Claims No: 14–0239V
29. Carey Sweet, Sacramento, California, Court of Federal Claims No: 14–0240V
30. Brian Lauer, Boston, Massachusetts, Court of Federal Claims No: 14–0244V
31. Joaquim Pereira, Boston, Massachusetts, Court of Federal Claims No: 14–0246V
32. Michael Askew, Durham, North Carolina, Court of Federal Claims No: 14–0252V
33. Charmaine Johnson on behalf of K.J., Houston, Texas, Court of Federal Claims No: 14–0254V

[FR Doc. 2014–09422 Filed 4–24–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request, Questionnaire Cognitive Interviewing and Pretesting (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in

the **Federal Register** on January 3, 2014, (Vol. 79, p. 402) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Gordon Willis, Division of Cancer Control and Population Sciences, 9609 Medical Center Drive, Rm 3E358, Bethesda, MD 20892–9762 or call non-toll-free number 240–276–6788 or Email your request, including your address to: *willis@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Questionnaire Cognitive Interviewing and Pretesting (NCI), 0925–0589, Revision, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: For many surveys and self-report-based data collection efforts, it is advantageous to the government if development follows a pretesting sequence equivalent to that used at National Center for Health Statistics or the Census Bureau. For example, the Health Information National Trends Survey (HINTS: OMB No. 0925–0538) has undergone multiple cycles of cognitive testing to refine both the questionnaire, and supporting materials such as advance letters and brochures. The types of activities covered by this Generic request include: (1) Survey material development and pretesting based on cognitive interviewing methodology and use of focus groups, (2) Research on the cognitive aspects of survey methodology, (3) Research on computer-user interface design for computer-assisted instruments, also known as Usability Testing, (4) Pilot Household interviews are pilot tests (either personal, telephone, or Web-based) conducted with respondents using professional field interviewers; and (5) Formative research that depends on the use of interviewing techniques to develop products such as research priorities, or expert consensus on best practices. Additionally, formative research has been increasingly used to develop new data collection instruments using psychometric procedures, including Computerized Adaptive Testing (CAT). Test-retest reliability testing can also be used as a type of formative research in the development of questionnaires, software applications that depend on self-report, and other measurement instruments.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,600.

3-YEAR ESTIMATED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Burden hours
Physicians, Scientists and similar Respondents	1,200	1	75/60	1,500
Experts in their Field	600	1	75/60	750
Administrators/Managers	600	1	75/60	750
General Public	1,200	1	30/60	600

Dated: April 21, 2014.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–09446 Filed 4–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Next Series of Tobacco Use Supplements to the Current Population Survey (TUS–CPS) (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 22 (Volume 79, P. 3598) and allowed 60-days for public comment. There were a total of three comments. Two of the three comments were requests for a copy of the questionnaire and plans, which were sent to the requestors. One of these requestors commented in support of FDA's co-sponsorship with NCI of the TUS–CPS and NCI/NIH working with sister agencies and HHS to harmonize and coordinate tobacco use information across various federal surveys. It further stated the importance of this kind of HHS evaluation with sister agencies, made specific suggestions what this should include, and concluded with offering assistance. Additionally, the third public comment was about spending of tax-payers' dollars. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Anne Hartman, Health Statistician, Risk Factor Monitoring and Methods Branch, National Cancer Institute, NIH, MSC 9762, 9609 Medical Center Drive, Bethesda, MD or call non-toll-free number 240–276–6704 or Email your request, including your address to: *hartmana@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Next Series of Tobacco Use Supplements to the Current Population Survey (TUS–CPS), 0925–0368, Reinstatement with Change, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The 2014–15 Tobacco Use Supplement—Current Population Survey (TUS–CPS) will be conducted by the Census Bureau and is co-sponsored by the National Cancer Institute (NCI) and the Food and Drug Administration (FDA). Fielded since 1992, most recently in 2010–11, this survey is part of a continuing series of surveys (OMB No. 0925–0368) sponsored by NCI that has been administered triennially as part of the Census Bureau's and the Bureau of Labor Statistics' CPS. For the TUS–CPS, data will be collected from the U.S. civilian non-institutionalized population on smoking, other tobacco use, including switching, flavors, dependence, cessation attempts, and policy and social norms. The TUS–CPS has been a key source of national, state, some local-level, and health disparity data on these topics in U.S. households because it uses a large, nationally representative sample. The 2014–15 TUS–CPS is designed to meet both NCI's and FDA's goals. The NCI and FDA are co-sponsoring the 2014–15 TUS–CPS through parallel, but separate interagency agreements with the Census Bureau. The NCI is particularly focused on policy information such as home and workplace smoking policies, cigarette price, and impact of these on subsequent purchase and use behavior; and changes in smoking norms and attitudes. The FDA aims to support research to aid the development and evaluation of tobacco product regulations. The research findings generated from this program are expected to provide data to inform FDA regulation of the manufacture, distribution, and marketing of tobacco products to protect public health. A unique feature is the ability to link other social and economic Census Bureau and Bureau of Labor Statistics data, other sponsor-supported supplement data, and the National Longitudinal Mortality Study cancer incidence and cause-specific mortality data to the TUS–CPS data. Data will be collected in July 2014, January 2015, and May 2015 from about 255,000 respondents.

OMB approval is requested for 2 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 12,750.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of Respondent	Number of respondents	Responses per respondent	Average burden per response (in hour)	Annual burden hours
Individuals	127,500	1	6/60	12,750

Dated: April 21, 2014.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–09444 Filed 4–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01).

Date: May 16, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3121, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616 Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 22, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–09425 Filed 4–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Conference Grant Review Animal Models.

Date: May 12, 2014.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurobiology of Disease and Development.

Date: May 21, 2014.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–109: Mechanistic Insights from Birth Cohorts.

Date: May 22, 2014.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: April 22, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–09423 Filed 4–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Co-location and Integration of HIV Prevention and Medical Care Into Behavioral Health Program-NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services, (CMHS), Center for Substance Abuse Prevention (CSAP), Center for Substance Abuse Treatment (CSAT) are requesting approval from the Office of Management and Budget (OMB) for new data collection activities associated with their Co-location and Integration of HIV Prevention and Medical Care into Behavioral Health Program. The program is designed to support integrated behavioral health and physical health services for racial/ethnic populations at high risk for behavioral health disorders and at high risk for contracting HIV.

This information collection is needed to provide SAMHSA with objective information to document the reach and impact of the Co-location and Integration of HIV Prevention and Medical Care into Behavioral Health program. The information will be used to monitor quality assurance and quality performance outcomes for organizations funded by this grant program. The information will also be used to assess the impact of services on behavioral health and physical health services for individuals served by this program.

Collection of the information included in this request is authorized by Section 505 of the Public Health Service Act (42 U.S.C. 290aa–4)—Data Collection. Further support for the program was provided in the 2013 Senate Appropriations Report 113–71. The report urged SAMHSA to ''focus its efforts on building capacity and outreach to individuals at risk or with a primary substance abuse disorder and to improve efforts to identify such individuals to prevent the spread of HIV.'' Additional support for this data collection effort is provided by the 2013 National HIV/AIDS Strategy which instructed SAMHSA to ''support and rigorously evaluate the development and implementation of new integrated behavioral health models to address the intersection of substance use, mental health, and HIV.''

The table below reflects the annualized hourly burden.

Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours
HIV Testing Form	5,000	1	5,000	0.13	650
Co-Located and Integrated Care Tool—Baseline					
Clients with HIV Receiving Integrated Medical Services	200	1	200	0.58	117
Individuals only Receiving Prevention Services	1,000	1	1,000	0.12	120
Co-Located and Integrated Care Tool—Follow Up					
Clients with HIV Receiving Integrated Medical Services [2]	120	1	120	0.58	69.6
Co-Located and Integrated Care Tool—Discharge					
Clients with HIV Receiving Integrated Medical Services—Interview with Client [3]	28	1	28	0.58	16.2

Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours
Clients with HIV Receiving Integrated Medical Services—Interview with Client—Client not available—Administrative Data Only [4]	42	1	42	0.33	13.9
Individuals only Receiving Prevention Services [5]	800	1	800	0.06	48
HIV Indicators—Baseline					
Clients with HIV Receiving Integrated Medical Services	200	1	200	0.33	66
Clients with HIV Receiving Integrated Medical Services	120	1	120	0.25	30
Annual Total	5,000		7,510		1,143

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 or email her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received by June 24, 2014

Summer King,

Statistician.

[FR Doc. 2014–09407 Filed 4–24–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0020]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard-024 United States Coast Guard Auxiliary Database (AUXDATA) System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard-024 United States Coast Guard Auxiliary Database System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to track and report contact, activity, performance, and achievement information about members of its volunteer workforce element, the United States Coast Guard Auxiliary. As a result of a biennial review of this system, the Department of Homeland Security/United States Coast Guard is updating this system of records notice to: (1) Update categories of individuals covered by the system; (2) modify the categories of records in the system; and (3) update the system manager and address. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before May 27, 2014. This updated system will be effective May 27, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0020 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 343–4010.
- Mail: Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez, (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Coast Guard-024 Auxiliary Database (AUXDATA) System of Records.''

The DHS/USCG–024 Auxiliary Database System of Records allows the USCG to track and report contact, activity, performance, and achievement information about the members of its volunteer workforce element, the USCG Auxiliary. As a result of a biennial review of the system, (1) categories of individuals covered by the system have been updated to reflect the current year and accurate number of active duty and lawful residence admission, (2) categories of records in the system have been modified to include the member identification, and (3) the system manager and address have been updated to include command name, office symbol, and Mail Stop.

Consistent with DHS's information sharing mission, information stored in the DHS/USCG–024 AUXDATA System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCG may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by

the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–024 Auxiliary Database System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/United States Coast Guard (USCG)-024.

SYSTEM NAME:

DHS/USCG–024 Auxiliary Database System of Records (AUXDATA).

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

DHS maintains records are maintained at USCG Headquarters in Washington, DC, the USCG Operations Systems Center in Martinsburg, West Virginia, and field offices. AUXDATA is the information technology (IT) system in which records associated with this function are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The USCG Auxiliary Program has approximately 31,000 members in active status and approximately 7,000 members in retired status (i.e., members who have 15 years of recorded Auxiliary membership, but no longer desire to engage in Auxiliary activities). Categories of individuals covered by this system include all current and former USCG Auxiliarists, the volunteer workforce element of the USCG. This includes applicants who have submitted requisite information to the USCG as part of the enrollment process to become a USCG Auxiliarist. The enrollment process entails submission of this information, verification of proper age, U.S. citizenship or lawful permanent residence admission, and completion of a background check conducted through the USCG Security Center (SECCEN) and the Office of Personnel Management (OPM). Auxiliary enrollment ends upon disenrollment, retirement, or death. An Auxiliarist's AUXDATA records are archived upon the end of their enrollment.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name;
- Member identification number;
- Address;
- Birth date;
- Phone number;
- Auxiliary qualifications information (formal designations in program disciplines that result from successful completion of training regimens, for example: class instructor, vessel examiner, boat coxswain, and certifications and licenses);
- Auxiliary activities information (patrols conducted, classes taught); and
- Information on facilities (boats, radio stations or aircraft-owned by Auxiliarists as well as facility identification numbers (e.g., boat license number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

14 U.S.C. 632, 830, and 831; Departmental Regulations; 5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; and COMDTINST M16790.1 (series).

PURPOSE(S):

This system is the primary information management tool for the USCG Auxiliary program. As the repository for personal and activity data for Auxiliarists and the units they comprise, AUXDATA is routinely used at local, regional, and national USCG levels to measure and monitor the support the Auxiliary provides to USCG missions and to recognize Auxiliarists for their service. It also provides an inventory of Auxiliary surface, air, and radio facilities that are offered to and accepted for use by the USCG.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which

includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on tape at the USCG Operations Systems Center in Martinsburg, West Virginia.

RETRIEVABILITY:

Records may be retrieved by an individual's name or employee identification number.

SAFEGUARDS:

DHS/USCG safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Information collected by AUXDATA is stored for a minimum of five years after the record is created, then retained and destroyed in accordance with Coast Guard Commandant Instruction M5212.12 (series), Information and Life Cycle Management Manual, approved by NARA.

Personal information (name, employee identification number, address, birth date, phone number) is destroyed/deleted 30 years after disenrollment or death of a member. (AUTH: N1–26–05–10)

Item 2a Information on facilities (boats, radio stations or aircraft-owned by Auxiliarists as well as facility identification numbers (e.g., boat license number) are destroyed/deleted five years after facility becomes inactive or is withdrawn from service. (AUTH: N1–26–05–10) Item 2c(1)

Item 2b Auxiliary qualifications information (formal designations in program disciplines that result from successful completion of training regimens, for example: class instructor; vessel examiner; boat coxswain; and certifications and licenses) is contained within the Training Management Tool and are destroyed/deleted 30 years after disenrollment or death of a member. (AUTH: N1–26–05–10)

Item 2d Auxiliary activities information (patrols conducted, classes taught) is destroyed/deleted data when no longer needed for administrative use or five years after final action is completed. (AUTH: N1–26–05–10)

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–761), Office of Command, Control, Communications, Computers, and Sensors Capabilities, United States Coast Guard, Mail Stop 7331, Washington, DC 20593–0001. Commandant (CG–BSX), Office of Auxiliary and Boating Safety, United States Coast Guard, Mail Stop 7501, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and United States Coast Guard Freedom of Information Act Officer (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''FOIA Contact Information.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from forms completed by USCG Auxiliary members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 8, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–09476 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. USCG–2014–0098]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations on

matters relating to the safe and secure marine transportation of hazardous materials activities insofar as they relate to matters within the United States Coast Guard's jurisdiction.

DATES: Applications for CTAC must include a cover letter and resume. Note that all materials must be received on or before June 9, 2014.

ADDRESSES: If you wish to apply for membership, your cover letter and resume should be submitted via one of the following methods:

- By Email: *Patrick.A.Keffler@uscg.mil*
- By Fax: (202) 372–8380
- By Mail: Mr. Patrick Keffler, Alternate Designated Federal Official (ADFO) of CTAC, Commandant, Hazardous Materials Division (CG–ENG–5), U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7509 Washington, DC 20593–7509.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cristina Nelson, 2703 Martin Luther King Jr. Avenue SE., Stop 7509 Washington, DC 20593–7509, *cristina.e.nelson@uscg.mil*, phone: 202–372–1419, fax: 202–372–8380.

SUPPLEMENTARY INFORMATION: CTAC is established under the authority of Section 871 of the Homeland Security Act of 2002, 6 U.S.C. 451. CTAC is an advisory committee established in accordance with and operating under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix, Public Law 92–463, 86 Stat. 770, as amended. This notice is issued under the authority of FACA.

CTAC provides advice and recommendations to the Department of Homeland Security (DHS) on matters relating to the safe and secure marine transportation of hazardous materials activities insofar as they relate to matters within the United States Coast Guard's jurisdiction.

CTAC meets at least twice per year. It may also meet for extraordinary purposes. Its Subcommittees may meet to consider specific problems as required.

The Coast Guard will consider applications for 10 positions that become vacant on September 17, 2014. To be eligible, applicants should have experience in chemical manufacturing, marine handling or transportation of chemicals, vessel design and construction, marine safety or security, or marine environmental protection. Each member serves for a term of three years. CTAC members may be limited to serving no more than two consecutive three-year terms. A member appointed to fill unexpired term may serve the remainder of that term. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in The *Lobbying Disclosure Act* of 1995 (Pub. L. 104–65, as amended by Title II of Pub. L. 110–81).

The Department of Homeland Security (DHS) does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, submit your application materials indicating the position you wish to fill; specify your area of expertise, knowledge and experience that qualify you for the service on CTAC; and submit your complete package to Mr. Patrick Keffler, ADFO of CTAC, via one of the transmittal methods provided above. All email submittals will receive email receipt confirmation. Note that during the vetting process, applicants may be asked by the White House Liaison Office through the Coast Guard to provide their date of birth and social security number. To visit our online docket, go to *http://www.regulations.gov* enter the docket number (for this notice (USCG–2014–0098) in the Search box, and click ''Search''. Please do not post your resume on this site.

Dated: April 22, 2014.

F. J. Sturm,

Acting Director of Commercial Regulations and Standards.

[FR Doc. 2014–09496 Filed 4–24–14; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0146]

Revisions to Maritime Security Directive 104–6; Guidelines for U.S. Vessels Operating in High Risk Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Revision 7 to Maritime Security (MARSEC) Directive 104–6, which provides guidelines for U.S. vessels operating in high risk waters (HRW) where acts of terrorism, piracy, and armed robbery against ships are prevalent, as well as specific guidance for offshore supply vessels and liftboats operating in the Gulf of Guinea. The directive contains security-sensitive information and therefore cannot be made available to the general public. U.S. vessel owners and operators who have needed to take action under previous versions of MARSEC Directive 104–6, or whose vessels operate in waters off the coast of Africa, should immediately contact their local Coast Guard Captain of the Port or District Commander for a copy of Revision 7, which contains important updates to the locations of HRW and to the guidelines for addressing security risks in those waters. The Coast Guard advises such owners and operators that, under Revision 7, they may need to take specific actions in accordance with MARSEC Directive 104–6 before their vessel enters HRW. This notice is issued under the authority of 5 U.S.C. 552(a).

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Aaron Demo, U.S. Coast Guard; telephone 202–372–1272, email *aaron.w.demo@uscg.mil.* For information about viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

Dated: April 20, 2014.

J.C. Burton,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2014–09385 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0001; OMB No. 1660—NEW]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emergency Notification System (ENS).

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the

requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 27, 2014.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Emergency Notification System (ENS).

Type of information collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: None.

Abstract: The ENS contains contact information for FEMA emergency team members. The ENS uses this information to send email, call cell, home, work phones and SMS devices to inform team members they have been activated. Teams include FEMA HQ COOP, Hurricane Liaison Team (HLT), Urban Search & Rescue (US&R), Emergency Response Group (ERG), etc. The system can only be accessed via DHS OneNet.

Affected Public: State, Local or Tribal Government; Federal Government.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 8 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $146.16. There are no annual costs to respondents' operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $173,401.85.

Dated: April 19, 2014.

Loretta Cassatt,

Branch Chief, Records, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2014–09451 Filed 4–24–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1404]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before July 24, 2014.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1404, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after

FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf*.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

I. Non-watershed-based studies:

Community	Community Map Repository Address
Santa Barbara, California, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Santa Barbara	City Administrator, 630 Garden Street, Santa Barbara, CA 93101.
Unincorporated Areas of Santa Barbara County	Santa Barbara County Public Works Department, Water Resources Division, 123 East Anapamu Street, Santa Barbara, CA 93101.
Lake County, Illinois, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Unincorporated Areas of Lake County	Central Permit Facility, 500 West Winchester Road, Unit 1, Libertyville, IL 60048.
Village of Grayslake	Village Hall, 10 South Seymour Avenue, Grayslake, IL 60030.
Village of Hainesville	Village Hall, 100 North Hainesville Road, Hainesville, IL 60030.
Village of Hawthorn Woods	Village Hall, 2 Lagoon Drive, Hawthorn Woods, IL 60047.
Village of Mundelein	Village Hall, 440 East Hawley Street, Mundelein, IL 60060.
Village of Round Lake	Village Hall, 442 North Cedar Lake Road, Round Lake, IL 60073.
Village of Round Lake Park	Village Hall, 203 East Lake Shore Drive, Round Lake Park, IL 60073.
Village of Volo	Village Hall, 500 South Fish Lake Road, Volo, IL 60073.
Village of Wauconda	Village Hall, 101 North Main Street, Wauconda, IL 60084.
Lake County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Griffith	Town Hall, 111 North Broad Street, Griffith, IN 46319.
Town of Highland	Town Hall, 3333 Ridge Road, Highland, IN 46322.
Town of Munster	Town Hall, 1005 Ridge Road, Munster, IN 46321.
Town of Schererville	Town Hall, 10 East Joliet Street, Schererville, IN 46375.
Unincorporated Areas of Lake County	County Building, 2293 North Main Street, Crown Point, IN 46307.
Buchanan County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Independence	City Hall, 331 1st Street East, Independence, IA 50644.
Unincorporated Areas of Buchanan County	Buchanan County Zoning Office, 210 5th Avenue Northeast, Suite I, Independence, IA 50644.
Washington County, Kansas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Barnes	City Hall, 202 Railroad Avenue, Barnes, KS 66933.
City of Clifton	City Hall, 104 East Parallel Street, Clifton, KS 66937.
City of Greenleaf	City Hall, 507 5th Street, Grenleaf, KS 66943.
City of Haddam	City Office, 412 Main Street, Haddam, KS 66944.
City of Hanover	City Hall, 200 North Railroad Street, Hanover, KS 66945.
City of Hollenberg	City Hall, 427 Fuller Street, Hollenberg, KS 66946.
City of Linn	City Hall, 104 5th Street, Linn, KS 66953.
City of Mahaska	City Hall, 109 North Main Street, Mahaska, KS 66955.
City of Morrowville	City Hall, 111 South Main Street, Morrowville, KS 66958.
City of Palmer	City Hall, 217 North Illinois Street, Palmer, KS 66962.
City of Vining	City Hall, 109 South Scribner Street, Vining, KS 66937.
City of Washington	City Hall, 301 C Street, Washington, KS 66968.
Unincorporated Areas of Washington County	Emergency Management Office, 214 C Street, Washington, KS 66968.
Middlesex County, Massachusetts (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Bedford	Town Hall, 10 Mudge Way, Bedford, MA 01730.
Town of Billerica	Town Hall, 365 Boston Road, Billerica, MA 01821.

Community	Community Map Repository Address
Town of Burlington	Town Hall, 29 Center Street, Burlington, MA 01803.
Town of Lexington	Town Offices, 1625 Massachusetts Avenue, Lexington, MA 02420.
Town of Tewksbury	Town Hall, 1009 Main Street, Tewksbury, MA 01876.
Town of Wilmington	Town Hall, 121 Glen Road, Wilmington, MA 01887.
Sweet Grass County, Montana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Big Timber	Sweet Grass County Annex, Sweet Grass County Planning Office, 515 Hooper Street, Big Timber, MT 59011.
Unincorporated Areas of Sweet Grass County	Sweet Grass County Annex, Sweet Grass County Planning Office, 515 Hooper Street, Big Timber, MT 59011.
Greene County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Hunter	Hunter Town Hall, 5748 State Route 23A, Tannersville, NY 12485.
Town of Jewett	Municipal Building, 3547 County Route 23C, Jewett, NY 12444.
Town of Lexington	Municipal Building, 3542 State Route 42, Lexington, NY 12542.
Village of Hunter	Village Hall, 7955 Main Street, Hunter, NY 12442.
Village of Tannersville	Village Hall, 1 Park Lane, Tannersville, NY 12485.
Sullivan County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Neversink	Neversick Town Hall, 273 Main Street, Grahamsville, NY 12740.
Ulster County, New York (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Denning	Denning Town Clerk's Office, 1567 Denning Road, Claryville, NY 12725.
Town of Hardenburgh	Hardenburgh Town Hall, 51 Rider Hollow Road, Arkville, NY 12406.
Town of Hurley	Town Hall, 10 Wamsley Place, Hurley, NY 12443.
Town of Marbletown	Marbletown Town Hall, 3775 Main Street, Stone Ridge, NY 12484.
Town of Olive	Olive Town Hall, 45 Watson Hollow Road, West Shokan, NY 12494.
Town of Shandaken	Town Hall, 7209 Route 28, Shandaken, NY 12480.
Town of Wawarsing	Wawarsing Town Assessor's Office and Building Department, 108 Canal Street, Ellenville, NY 12428.
Town of Woodstock	Town Clerk's Office, 45 Comeau Drive, Woodstock, NY 12498.
Pittsburg County, Oklahoma, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Kiowa	City Hall, 813 South Harrison Street, Kiowa, OK 74553.
Unincorporated Areas of Pittsburg County	Pittsburg County Courthouse, 115 East Carl Albert Parkway, McAlester, OK 74501.
Davidson County, Tennessee, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Belle Meade	City Hall, 4705 Harding Road, Nashville, TN 37205.
City of Berry Hill..	
City of Forest Hills	City Hall, 6300 Hillsboro Road, Nashville, TN 37215.
City of Goodlettsville	City Hall, 105 South Main Street, Goodlettsville, TN 37072.
City of Nashville & Davidson County	Metro Nashville Public Works Department, 720 South Fifth Street, Nashville, TN 37206.
City of Oak Hill	City Hall, 5548 Franklin Pike, Suite 101, Nashville, TN 37220.
City of Portsmouth, Virginia (Independent City)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Portsmouth	Department of Planning, City Hall Building, 801 Crawford Street, 4th Floor, Portsmouth, VA 23704.
Pacific County, Washington, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	

Community	Community Map Repository Address
City of Ilwaco	City Hall, 120 1st Avenue North, Ilwaco, WA 98624.
City of Long Beach	City Hall, 115 Bolstad Avenue West, Long Beach, WA 98631.
City of Raymond	City Hall, 230 2nd Street, Raymond, WA 98577.
City of South Bend	City Hall, 1102 West 1st Street, South Bend, WA 98586.
Shoalwater Bay Indian Tribe	Tribal Center, 2373 Old Tokeland Road, Tokeland, WA 98590.
Unincorporated Areas of Pacific County	Emergency Management Office, 300 Memorial Drive, South Bend, WA 98586.

II. Watershed-based studies:

Community	Community Map Repository Address
Upper Grand Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Caldwell County, Missouri, and Incorporated Areas	
City of Braymer	City Hall, 108 East 2nd Street, Braymer, MO 64624.
City of Kingston	City Hall, 30 West Main Street, Kingston, MO 64650.
Unincorporated Areas of Caldwell County	County Courthouse, 49 East Main Street, Kingston, MO 64650.
Daviess County, Missouri, and Incorporated Areas	
City of Gallatin	City Hall, 112 East Grand Street, Gallatin, MO 64650.
Town of Lock Springs	Lock Springs Town Hall, 200 Lake Street, Jameson, MO 64648.
Unincorporated Areas of Daviess County	County Courthouse, 102 North Main Street, Gallatin, MO 64640.
Village of Jameson	Village Hall, 201 Main Street, Jameson, MO 64647.
Gentry County, Missouri, and Incorporated Areas	
City of Albany	City Hall, 106 East Clay Street, Albany, MO 64402.
City of Stanberry	City Hall, 130 West 1st Street, Stanberry, MO 64489.
Unincorporated Areas of Gentry County	County Courthouse, 200 West Clay Street, Albany, MO 64402.
Village of Darlington	Village Hall, 209 Mill Street, Darlington, MO 64438.
Village of Gentry	Gentry County Courthouse, 200 West Clay Street, Albany, MO 64402.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 14, 2014.

Roy E. Wright,

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

[FR Doc. 2014–09450 Filed 4–24–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–17]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 17, 2014.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2014–09176 Filed 4–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N067; FXES11120800000–145–FF08EVEN00]

Receipt of Application for Renewal of Incidental Take Permit; Collado Drive Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit renewal application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Collado Homes, LLC (applicant), for a renewal of incidental take permit TE179280–1 under the Endangered Species Act of 1973, as amended (Act). The applicant

has requested a renewal that will extend permit expiration by 5 years from the date the permit is reissued. The applicant has agreed to follow all of the existing habitat conservation plan (HCP) conditions. If renewed, no additional take will be authorized. The permit would authorize take of the federally endangered Mount Hermon June beetle (*Polyphylla barbata*), incidental to otherwise lawful activities associated with the Collado Homes residential development.

DATES: Written comments should be received on or before May 27, 2014.

ADDRESSES: You may obtain a copy of the permit renewal application and the HCP by writing to the Ventura Fish and Wildlife Ecological Services Office, Attn: Permit number TE179280–1, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. In addition, we will make the permit renewal application and HCP available for public inspection by appointment during normal business hours at the above address. Please address written comments to Steve Henry, Acting Field Supervisor, at the address above. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Douglass M. Cooper, Deputy Assistant Field Supervisor, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

The Mount Hermon June beetle was listed by the U.S. Fish and Wildlife Service as endangered on January 1, 1997. Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental Take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Collado Homes, LLC, has applied for renewal of a permit for the incidental take of the endangered Mount Hermon June beetle. The potential taking would occur incidental to a minor land subdivision and construction of four new single-family residences at a 1.093-acre undeveloped project site that consists of a single parcel (APN 021–031–13). This parcel is located at the northern terminus of Collado Drive in the Whispering Pines neighborhood of Scotts Valley (Santa Cruz County), CA. This proposed residential development project is known as the Collado Drive Subdivision. An incidental take permit was first issued for the project on July 29, 2008. No project activities occurred during the first 5-year term of the incidental take permit, and conditions at the site remain unchanged from the time of original permit issuance.

Our Preliminary Determination

The Service has made a preliminary determination that renewal of the permit is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA), nor will it individually or cumulatively have more than a negligible effect on the species covered in the HCP. Therefore, the permit renewal qualifies for a categorical exclusion under NEPA as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 8.5).

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: April 21, 2014.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2014–09420 Filed 4–24–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

FWS–HQ–MB–2014–N269; 91400–5110–0000; 91400–9410–0000]

Multistate Conservation Grant Program; Priority List and Approval for Conservation Projects

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of priority list and approval of projects.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce the fiscal year 2014 priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (AFWA). As required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, AFWA submits a list of projects to us each year to consider for funding under the Multistate Conservation Grant program. We have reviewed the list and have awarded all the grants from the list.

ADDRESSES: John C. Stremple, Multistate Conservation Grants Program Coordinator, Wildlife and Sport Fish Restoration Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop WSFR–4020, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: John C. Stremple, at the above address, or at (703) 358–2156 (phone) or *John_Stremple@fws.gov* (email).

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate Conservation Grant Program. The Improvement Act authorizes us to award grants of up to $3 million annually from funds available under each of the restoration acts, for a total of up to $6 million annually. Projects can be funded from both funds depending on the project activities. We may award grants to projects from a list of priority projects recommended to us by the Association of Fish and Wildlife

Agencies. The FWS Director, exercising the authority of the Secretary of the Interior, need not fund all projects on the list, but all projects funded must be on the list.

Grantees under this program may use funds for sport fisheries and wildlife management and research projects, boating access development, hunter safety and education, aquatic education, fish and wildlife habitat improvements, and other purposes consistent with the enabling legislation.

To be eligible for funding, a project must benefit fish and/or wildlife conservation in at least 26 States, in a majority of the States in any one FWS Region, or it must benefit a regional association of State fish and wildlife agencies. We may award grants to a state, a group of states, or one or more nongovernmental organizations. For the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, we may award grants to the FWS, if requested by AFWA, or to a State or a group of states. Also, AFWA requires all project proposals to address its National Conservation Needs, which AFWA announces annually at the same time as its request for proposals. Further, applicants must provide certification that no activities conducted under a multistate conservation grant will promote or encourage opposition to regulated hunting or trapping of wildlife, or to regulated angling or taking of fish.

Eligible project proposals are reviewed and ranked by AFWA committees and interested nongovernmental organizations that represent conservation organizations, sportsmen's and women's organizations, and industries that support or promote fishing, hunting, trapping, recreational shooting, bowhunting, or archery. AFWA's Committee on National Grants recommends a final list of priority projects to the directors of State fish and wildlife agencies for their approval by majority vote. By statute, AFWA then must transmit the final approved list to the FWS for funding under the Multistate Conservation Grant program by October 1 of the fiscal year.

This year, we received a list of 15 projects recommended for funding by AFWA. We have awarded all of them for fiscal year 2014. The list follows:

MULTISTATE CONSERVATION GRANT PROGRAM

(FY 2014 projects)

ID	Title	Submitter	PR funding [1]	DJ funding [2]	Total 2014 grant request
1	Enhancing the Wildlife and Sport Fish Restoration Program and Industry Relations.	Wildlife Management Institute.	AFWA	$100,000	$200,000
2	State Fish and Wildlife Agency Technical Workgroup for the 2016 National Survey.	AFWA	45,600	45,600	91,200
3	Coordination of the Industry, Federal and State Agency Coalition.	AFWA	92,850	92,850	185,700
4	State Fish and Wildlife Agency Director Travel Administration and Coordination.	AFWA	64,075	64,075	128,150
5	State Fish and Wildlife Agency Administration and Coordination.	AFWA	146,880	146,880	293,760
6	To Enhance State Wildlife Agencies' Authority to Manage Wildlife Resources through Increased Understanding of International Treaties and Conventions.	AFWA	23,584	23,584	47,168
7	Building Capacity to Assist the State Fish and Wildlife Agencies in Developing the Association's 2013 Legal Strategic Plan.	AFWA	94,887.97	94,887.96	189,775.93
8	Increase Fishing License Buyers and Excise Tax Receipts through State-Industry Cooperative Research Into Churn Rates and First Time License Buyers.	ASA	0	243,800	243,800
9	Increase Hunting License Buyers and Excise Tax Receipts Through State-Industry Cooperative Recruitment and Retention Research and Testing.	NSSF	508,600	0	508,600
10	Maintaining State Agency Leadership in the Management of Fish and Wildlife through Revision/Implementation of State Wildlife Action Plans.	AFWA	209,070	209,070	418,140
11	National Fish Habitat Action Plan Implementation and Promoting Strategic Fish Habitat Conservation through Regionally Coordinated Science and Collaboration.	AFWA	0	544,500	544,500
12	Recruiting and Retaining Nontraditional Adult Participants into Fishing and Hunting through Targeted Marketing, Instruction, Mentoring and Social Reinforcement.	Georgia Department of Natural Resources/ SEAFWA.	138,500	138,500	277,000
13	Development and Registration of Toxicants and Delivery Strategies for Controlling Wild Hogs.	Texas Parks and Wildlife Department.	414,972	46,108	461,080
14	Research for and Coordination for the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.	U.S. FWS	425,391	425,391	850,782
15	Planning and Coordination of the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.	NSSF	49,228.38	49,228.39	98,456.77
			2,313,638.35	2,224,474.35	4,538,112.70

[1] PR Funding: Pitman-Robertson Wildlife Restoration funds.
[2] DJ Funding: Dingell-Johnson Sport Fish Restoration funds.
ASA: American Sport Fishing Association.
ATA: Archery Trade Association.
SEAFWA: Southeast Association of Fish and Wildlife Agencies.
NSSF: National Shooting Sports Foundation.

Dated: February 4, 2014.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–09416 Filed 4–24–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XL LLIDB00100 LF1000000.HT0000 LXSS024D0000 241A 4500063224]

Notice of Public Meeting, Gateway West Project Subcommittee of the Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Gateway West Project Subcommittee of the Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held on May 13, 2014, at the Boise District Office located at 3948 Development Avenue, Boise, ID 83705, beginning at 9:00 a.m. and adjourning at 3:00 p.m. Members of the public are invited to attend. There will be a public comment period at the meeting.

FOR FURTHER INFORMATION CONTACT: Marsha Buchanan, Supervisory Administrative Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3364.

SUPPLEMENTARY INFORMATION: The Gateway West Project Subcommittee advises the Boise District Resource Advisory Council on matters of planning and management of the Gateway West Project (segments 8 and 9). The Boise District Resource Advisory Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. The subcommittee will be discussing proposed routes of the Gateway West transmission line segments 8 and 9 and issues associated with mitigation of impacts to and enhancement of resources in the Morley Nelson Snake River Birds of Prey National Conservation Area. Agenda items and location may change due to changing circumstances. The public may present written or oral comments to members of the Subcommittee.

It is possible that the Subcommittee will not need this scheduled meeting to complete its work. If the meeting announced in the **DATES** section above is cancelled, announcements will be made through local media outlets and on the BLM Idaho Web site, *http://www.blm.gov/id.*

Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Dated: April 21, 2014.

Brandon Knapton,

Acting BLM Boise District Manager.

[FR Doc. 2014–09508 Filed 4–24–14; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–15540: PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 5, 2014. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 12, 2014. 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.

Dated: April 11, 2014.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Immaculata Seminary Historic District, (Tenleytown in Washington, DC: 1770–1941, MPS), 4340 Nebraska Ave. NW., Washington, 14000209

Meridian Hill Historic District, 2201–2319 15th, 2400–2600 blks. 15th & 16th, 2600–3000 blks. 16th Sts. NW., 1600 blk. of Crescent Pl. NW., Washington, 14000211

FLORIDA

Miami-Dade County

Sunshine State Arch, Jct. of NW., 13th Ave. & NW., 167th St., Miami Gardens, 14000210

IOWA

Clay County

North Grand Avenue Residential Historic District, N. Grand Ave. from 9th to 18th Sts. & 1st Ave. W. to 1st Ave. E., Spencer, 14000212

Linn County

Our Mother of Sorrows Grotto Historic District, 1330 Elmhurst Dr. NE., Cedar Rapids, 14000213

MASSACHUSETTS

Barnstable County

First Congregational Parish Historic District, 3 First Parish Ln., 26 Bridge Rd., Truro, 14000214

Franklin County

Moore's Corner Historic District, North Leverett, Dudleyville, Rattlesnake Gutter & Church Hill Rds., Leverett, 14000215

MINNESOTA

Goodhue County

Bringgold, Jacob A. and Mary Finn House, 318 SW., 2nd St., Pine Island, 14000216

Hennepin County

Lake Harriet Methodist Episcopal Church, 4401 Upton Ave. S., Minneapolis, 14000217 Ramsey County

United States Post Office and Custom House, 180 Kellogg Blvd. E., St. Paul, 14000218

Washington County

District No. 34 School, 13728 St. Croix Trail S., Denmark Township, 14000220

MONTANA

Carbon County

Red Lodge—Cooke City Approach Road Historic District, U.S. 212, Red Lodge, 14000219

Fergus County

St. Wenceslaus Catholic Church, 7724 Danvers Rd., Danvers, 14000221

NEW JERSEY

Bergen County

Ridgewood Country Club, 96 W. Midland Ave., Paramus Borough, 14000222

NEW YORK

Cayuga County

Tryon, Frank and Eliza, House, 8976 N. Seneca St., Weedsport, 14000223

Dutchess County

Bangall Post Office, 105 Hunns Lake Rd., Bangall, 14000224

Ontario County

Geneva Downtown Commercial Historic District, 8–156 Castle, 16 & 20 E. Castle, 396–555 Exchange, 20–120 Seneca, 24–52, Linden & 317, 319, 325 & 329 Main Sts., Geneva, 14000225

Schenectady County

Glenville District No. 5 Schoolhouse, 2140 Potter Rd., Glenville, 14000226

NORTH CAROLINA

Forsyth County

Hoots Milling Company Roller Mill, 1151 Canal Dr., Winston-Salem, 14000227

Gaston County

Bessemer City Downtown Historic District, Roughly bounded by 13th & E. Alabama Sts., E. & W. Virginia, E. Alabama & W. Pennsylvania Aves., Bessemer City, 14000228

Moore County

Firleigh Farms, 252 Firleigh Rd., Southern Pines, 14000229

Wake County

Fuquay Springs Historic District (Boundary Increase), (Wake County MPS), Roughly bounded by S. Main & W. Spring Sts., Sunset & Kite Drs., Fuquay Varina, 14000230

VIRGINIA

Danville Independent City

Mechanicsville Historic District, Floyd, High, North Ridge, Monroe & Upper Sts., Danville (Independent City), 14000231

Fauquier County

Carters Run Rural Historic District, Generally centered along Carters Run, Scotts & E. side of Free State Rds., Marshall, 14000236

The Plains Historic District, Parts of Main, Mosby, Lee, Bragg, Stuart, Jackson, Pickett & Broad Sts., Fauquier & Loudoun Aves., Hopewell Rd., The Plains, 14000232

Frederick County

Millbank, 3100 Berryville Rd., Winchester, 14000233

Gloucester County

Point Lookout Archaeological Site, Address Restricted, White Marsh, 14000234

Roanoke Independent City

Salem Avenue—Roanoke Automotive Commercial Historic District (Boundary Increase II), 400 & 500 blks. of Campbell Ave. SW., Roanoke (Independent City), 14000235

Rockingham County

Melrose Caverns and Harrison Farmstead, 6639 N. Valley Pike, Harrisonburg, 14000237

Plains Mill, 14767 Plains Mill Rd., Timberville, 14000238

Virginia Beach Independent City

Cavalier Hotel, 4200 Pacific Ave., Virginia Beach (Independent City), 14000239

Warren County

Lackawanna, 236 Riverside Dr., Front Royal, 14000240

A request to move has been received for the following resource:

WASHINGTON

Snohomish County

Green Mountain Lookout, Darrington Ranger District, Darrington, 88000117

[FR Doc. 2014–09379 Filed 4–24–14; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Outer Continental Shelf Scientific Committee; Announcement of Plenary Session

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Meeting.

SUMMARY: The Outer Continental Shelf (OCS) Scientific Committee (Committee) will meet at the Sheraton Reston Hotel.

DATES: Tuesday, May 13, 2014, Registration opens at 8:00 a.m., Plenary Session from 9:00 a.m. to 5:15 p.m.; Wednesday, May 14, 2014, Fiscal Year 2015 Studies Presentations from 8:30 a.m. to 5:00 p.m.; and on Thursday, May 15, 2014, Plenary Session from 9:40 a.m. to 5:00 p.m.

ADDRESSES: 11810 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: A copy of the draft agenda can be located on the Committee's Web site: *http://www.boem.gov/About-BOEM/Public-Engagement/Federal-Advisory-Committees/OCS-Scientific-Committee/Index.aspx*, or can be requested from BOEM by emailing Ms. Phyllis Clark at *Phyllis.Clark@boem.gov*. Other inquiries concerning the Committee meeting should be addressed to Dr. Rodney Cluck, Executive Secretary to the Committee, Bureau of Ocean Energy Management, 381 Elden Street, Mail Stop HM–3115, Herndon, Virginia 20170–4817, or by calling (703) 787–1087 or via email at *Rodney.Cluck@boem.gov*.

SUPPLEMENTARY INFORMATION: The Committee will provide advice to the Secretary, through the Director, on the scientific quality and value for decisionmaking of the OCS Environmental Studies Program and may recommend changes in scope, direction, and emphasis.

On Tuesday, May 13, the Committee will meet in plenary session. Dr. William Brown, Designated Federal Officer of the Committee and Chief Environmental Officer, will address the Committee on issues and challenges BOEM is facing and will present recent BOEM accomplishments.

There will be an update from each region's Environmental Studies Chief on OCS activities and current issues.

On Wednesday, May 14, the Committee will be presented the specific research plans for proposed studies.

On Thursday, May 15, from 9:40 a.m. 5:00 p.m., the Committee will report its comments regarding the FY 2015 proposed studies to BOEM. Public comment will be held at 3:20 p.m. following Committee business.

The meetings are open to the public. Approximately 50 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: April 14, 2014.

William Y. Brown,

Chief Environmental Officer, Office of Environmental Programs.

[FR Doc. 2014–09278 Filed 4–24–14; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Final Finding of No Significant Impact Treasure Lake Job Corps Center Facility Improvements Located at Indiahoma Road, Indiahoma, Oklahoma

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Final Finding of No Significant Impact Treasure Lake Job Corps Center Facility Improvements located at Indiahoma Road, Indiahoma, Oklahoma.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, ETA, in accordance with 29 CFR 11.11(d), gives final notice of the proposed facility improvements at the Treasure Lake Job Corps Center, and that this project will not have a significant adverse impact on the environment. Public scoping was initiated with a notice in the Lawton Constitution in Lawton, Oklahoma on July 16, 2013. The scoping period extended for 30 days, ending on August 16, 2013. No public responses were received. No changes to the text of the environmental assessment (EA) have been made.

Implementation of the selected alternative will not have significant impacts on the human environment. The determination is sustained by the analysis in the EA, agency consultation, the inclusion and consideration of public review, and the capability of mitigations to reduce or avoid impacts. Any adverse environmental impacts that could occur are no more than minor in intensity, duration and context and less-than-significant. As described in the EA, there are no highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects or elements of precedence. There are no previous, planned, or implemented actions, which in combination with the selected alternative would have significant effects on the human environment. Requirements of NEPA have been satisfied and preparation of an Environmental Impact Statement is not required.

DATES: *Effective Date:* These findings are effective as of November 20, 2013.

FOR FURTHER INFORMATION CONTACT: William A Dakshaw, Department of Labor, 200 Constitution Avenue NW., Room N–4460, Washington, DC 20210 (202) 693–2867 (this is not a toll free number).

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2014–09441 Filed 4–24–14; 8:45 am]

BILLING CODE 4510–FT–P

MARINE MAMMAL COMMISSION

Sunshine Act Notice: Correction

TIME AND DATE: On 17 April 2014, the Marine Mammal Commission published a correction to its original 11 April 2014 notice of its annual meeting. This document contains a revision to those notices regarding the starting time of the meeting on Thursday, 8 May 2014. That session will begin at 9:00 a.m., rather than 9:30 a.m.

CONTACT PERSON FOR MORE INFORMATION: Michael L. Gosliner, General Counsel, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504–0087; email: *mgosliner@mmc.gov.*

Dated: April 21, 2014.

Rebecca J. Lent,

Executive Director.

[FR Doc. 2014–09510 Filed 4–23–14; 11:15 am]

BILLING CODE 6820–31–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: April 21, 2014 (79 FR 22166).

TIME AND DATE: 11:15 a.m., Thursday, April 24, 2014.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Pursuant to the provisions of the ''Government in Sunshine Act'' notice is hereby given that the NCUA Board gave notice on April 21, 2014 (79 FR 22166) of the regular meeting of the NCUA Board scheduled for April 24, 2014. Prior to the meeting, on April 22, 2014, the NCUA Board unanimously determined that agency business required the addition of the first item on the closed agenda with less than seven days' notice to the public, and that no earlier notice of the deletion was possible.

MATTERS TO BE ADDED: 1. Delegation of Authority. Closed pursuant to Exemption (6).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2014–09558 Filed 4–23–14; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 78 FR 68479, November 14, 2013, and no substantial comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. This collection adds five new questions to the Medical History section of the forms. Three questions are related to Tuberculosis and were added to give medical examiners better information on which to base further testing, including whether to expose participants to additional doses of radiation. Two questions are related to diving. They were added to inform the medical examiners and healthcare providers of any pre-existing medical issues for those engaging in scientific diving in the Polar Regions. The full submission may be found at *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW., Room 10235, Washington, DC 20403, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230 or send email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

1. *Title of Collection:* Medical Clearance Process for Deployment to the Polar Regions (specified regions in the Arctic and all locations in the Antarctic under the auspices of the U.S. Antarctic Program).

OMB Control No.: 3145–0177.

2. *Type of Request:* Intent to seek approval to renew an information collection for three years

3. *Abstract:*

(a) Proposed Project: All individuals who anticipate deploying to Antarctica under the auspices of the U.S. Antarctic Program or to certain regions of the Arctic under NSF/Geosciences Division of Polar Programs Arctic Program (Arctic Program) are required to take and pass a rigorous physical examination prior to deploying. The physical examination includes a personal medical history, medical examination, a dental examination and for those persons planning to winter over in Antarctica a psychological examination is also required. The requirement for this determination of physical status is found in 42 U.S.C. 1870 (Authority) and 62 FR 31522, June 10, 1997 (Source), unless otherwise noted. This part sets forth the procedures for medical screening to determine whether candidates for participation in the U.S. Antarctic [[Page 216]] or Arctic Program are physically qualified and psychologically adapted for assignment or travel to either of these Polar Regions. Examinations are necessary to determine the presence of any physical, dental or psychological (when applicable) conditions that would threaten the health or safety of the candidate or other U.S. Antarctic or Arctic Program participants or that could not be effectively treated by the limited medical care capabilities in the polar regions.

(b) Presidential Memorandum No. 6646 (February 5, 1982) (available from the National Science Foundation, Division of Polar Programs, Room 755, 4201 Wilson Blvd., Arlington, VA 22230) sets forth the National Science Foundation's overall management responsibilities for the entire U.S. national program in Antarctica.

4. Use of the Information: All of the information requested on the forms in the proposed packet will be used to screen out individual participant's whose physical qualifications for traveling to and working in the harsh environments of the Polar Region(s) to which assigned do not meet the requirements specified in NSF Polar Medical Screening Guidelines. The information on the forms includes the traveler's personal and emergency points of contact, deployment information (location, dates, employer, job titles), personal medical history, and social behavior (alcohol and tobacco use). This information helps inform the medical providers of the participant's current within 12 months and past physical, dental and in some cases, psychological conditions to assist in determining their suitability for deployment and work in the extreme environments of the Polar Regions. Additionally, each person is given a personalized list of laboratory testing requirements with instructions to the doctors and dentists performing the examinations (including accompanying forms for them to complete) that will inform the medical decision makers. The packet also contains acknowledgement and consent documents that individuals need to read and sign or initial. These include: Important notices regarding potential penalties for engaging in illegal activities in countries being transited en route to Antarctica, medical risks of traveling to the Polar Regions, medical screening for blood-borne pathogens and a medical treatment consent form for minors deploying to the Polar Regions. The medical packet also includes a set of waiver documents for those individuals who do not meet the requirements of the *Polar Medical Screening Guidelines* but would like to be granted an administrative waiver for the identified medically disqualifying condition. The information collected in the waiver packet is used to ensure the individual knows and understands the reason for the disqualification and the employer is aware of the employee's disqualification and they both believe the individual can still participate in the program without unnecessarily risking his or her health and safety or that of others. The information is used by the medical providers to make recommendations to NSF regarding the feasibility of granting or denying the waiver. The information is used by NSF to determine whether a waiver is warranted.

5. *Format of the Forms:* The renewal forms have been converted to electronic format with a computer-generated unique control and tracking number. This number will be sequentially assigned by a database called *Pipeline* and will appear at the top of each page of the electronic version, which will also pre-populate the participant's name and date of birth on each page. Previous submissions of these forms included two sets: one for the Antarctic and one for the Arctic participants, with no distinguishable difference in actual medical information collected. The differences were in specific locations of deployment and in the number and titles assigned to the forms to make it easier for the participants. Additionally, the previous medical packet included 11 different forms (mostly numbered consecutively) plus mandatory reading materials and instructions to the participants and to their personal physicians. The current submission has combined the previous 1400 series Antarctic and Arctic forms into one set with one form number to be used by all non-uniformed participants regardless of the Polar Region to which the individual will be deploying. The new form consolidates all of the information (except the waiver packet) from the previous forms into one continuous 14-page form (NSF Form 1700) with a separate six-page mandatory reading packet. The forms will be available on NSF U.S. Antarctic Program's Web site: *http: //usap.gov;* and on CH2M Hill Polar Services', NSF prime support contractor for the Arctic Program, Web site: *http://cpspolar.com/medical/medical-forms* and by written or telephonic request to the prime support contractors subcontractor, University of Texas Medical Branch at Galveston—Polar Medical Operations; or from NSF Geosciences Division of Polar Programs (PLR). These forms are intended to be controlled and completed electronically and individuals will be encouraged to do so; but, participants may obtain and complete the forms by hand or typewriter, if they prefer. No version of the completed forms may be submitted

electronically due to insecure email transmissions; but individuals may complete the forms, save and retrieve the data on their personal computers. The waiver packet consists of four pages (the employee's application and release of liability statement and the employer's endorsement and release of liability statement). It is in paper form and is only sent to those individuals who are found not physical qualified and who specifically request to be considered for a waiver (less than 2%). It is not made available for download from any of the Web sites previously cited.

6. *Estimate of Burden:* Public reporting burden for this collection of information varies according to the amount of time the participant takes to read the instructions and mandatory reading material, the overall health of the individual, the amount of research required to complete the forms, the time it takes to make an appointment, take the examination and schedule and complete any follow-up medical, dental or psychological requirements and the time involved in providing additional information, when it is needed. The estimated processing time is up to six weeks from the time the individual receives the forms until he or she is notified by the contractor of his or her final clearance status. An additional period of up to eight weeks may be required for the individual, who was disqualified, to be notified of the disqualification, to request and receive the waiver packet, to obtain employer support and complete the waiver request, to do any follow-up testing, to return the waiver request plus any follow-up information to the contractor, for the contractor to forward the completed packet to NSF, and for NSF to make and promulgate a decision.

In addition to NSF Forms, the contractor prepares and sends a tailored transmittal email to each participant, based on the participant's employing organization. This email transmits (1) the medical forms; (2) mandatory reading materials and provides specific instructions for the participants and their personal physicians to follow; and (3) an unnumbered personalized checklist of all laboratory, shots and specialized exam requirements specific to that individual.

7. *Respondents:* All individuals deploying to the Antarctic and certain Arctic areas under the auspices of the U.S. Antarctic Program or the Arctic Program must complete these forms. There are approximately 3,300 submissions per year.

Estimated Number of Responses per Form: There is only one form with several parts. Responses range from 2 to approximately 238 responses per Part.

8. *Estimated Total Annual Burden on Respondents:* The total annual burden in hours, broken down by form varies according to the individual's ready access to the required information. However, a minimum of 6,600 hours annually is required if all requested information is available at the time the individuals fill out the forms and if all individuals use the electronic version of the form to provide the data. The form is programmed not to print until all data fields have been answered. An additional 27,000 hours is required to gather the data; read all the mandatory and instructional materials; make and keep examination appointments; and travel to and from those appointments.

9. *Frequency of Responses:* Individuals must complete the forms annually to be current within 12 months of their anticipated redeployment dates. Depending on an individual's medical status some persons may require additional laboratory results to be current within two to six-weeks of anticipated deployment.

Dated: April 22, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 2014–09418 Filed 4–24–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0081]

Standard Format and Content of Transportation Security Plans for Classified Matter Shipments

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new draft regulatory guide (DG), DG–7005, ''Standard Format and Content of Transportation Security Plans for Classified Matter Shipments.'' This new guidance describes a method that NRC staff considers acceptable for use in the development of classified matter transportation security plans, which identify the correct measures to protect classified matter while in transport.

DATES: Submit comments by June 24, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: The document will be available for those who have established a ''need-to-know'' and possess access permission to Official Use Only-Security Related Information (OUO–SRI). To review and provide comments on the document, contact: Al Tardiff, telephone: 301–287–3616 or email: *Al.Tardiff@nrc.gov*.

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: Mekonen Bayssie, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7489; email: *Mekonen.bayssie@nrc.gov* or Al Tardiff, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, telephone: 301–287–3616 or email: *Al.Tardiff@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0081 when contacting the NRC about the availability of information regarding this document. Draft regulatory guide, DG–7005, is withheld from public disclosure but is available to those affected licensees and cleared stakeholders who can or have demonstrated a need to know. The ''Backfitting and Issue Finality'' section describes previously issued guidance on this subject entitled, Interim Staff Guidance (ISG) DSP–ISG–01, Sta*ff Review Procedure for Transportation Security Plans for Classified Matter Shipments* (July 7, 2006). This document also contains OUO–SRI information.

Those who have a need to know or believe they have a need to know should contact Al Tardiff to obtain information about accessing these documents.

B. Submitting Comments

Please coordinate with Al Tardiff (telephone: 301–287–3616 or email: *Al.Tardiff@nrc.gov*) regarding the drafting and transmission of comments in order to protect comments that contain OUO–SRI information. Please include Docket ID NRC–2014–0081 in

the subject line of your comment submission to ensure that the NRC reviews any comment submission appropriately.

II. Additional Information

The NRC is issuing for comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Standard Format and Content of Transportation Security Plans for Classified Matter Shipments,'' is temporarily identified by its task number, DG–7005. Draft regulatory guide, DG–7005, is a proposed new guide in the NRC's ''Regulatory Guide'' series. This is a new guide that contains the procedures and measures that the applicant or licensee can describe in a classified matter transportation security plan to comply with NRC requirements. The regulatory framework that the NRC has established for security plans for the transportation of classified matter is set forth in § 95.39(e) of Title 10 of the *Code of Federal Regulations* (10 CFR).

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

Draft regulatory guide, DG–7005, provides guidance on development of transportation security plans to protect classified information while such information is in transport, in order to meet the requirements of 10 CFR part 95. The staff has previously issued guidance on this subject in DSP–ISG–01, *Staff Review Procedure for Transportation Security Plans for Classified Matter Shipments* (July 7, 2006). The staff will use the guidance in the review and approval of new and amended transportation security plans submitted to the NRC. Current licensees with NRC-approved transportation security plans may continue to use DSP–ISG–01, which the NRC has found acceptable for complying with 10 CFR part 95 regulations as long as the licensees do not change their NRC-approved transportation security plans. However, if a licensee makes changes to or proposes to amend such plans, then the staff will use the guidance in DG–7005 to evaluate the acceptability of the change or proposed amendment, unless the licensee provides sufficient basis and information that the licensee-proposed alternative to DG–7005 complies with applicable NRC regulations.

Issuance of the DG, if finalized, and NRC use of the DG as described above, would not constitute backfitting under any of the backfitting provisions in 10 CFR Chapter I, nor would it be regarded as backfitting under Commission and Executive Director for Operations guidance. In addition, issuance of the DG, if finalized would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The staff's position is based upon the following considerations.

1. Part 95 applies to materials licensees and other entities transporting (or placing into transport) classified security information, and contains requirements governing such transport. Although some of these materials licensees are protected by backfitting or issue protection provisions in 10 CFR part 52, these backfitting and issue finality protections do not extend to the procedures governing transport of classified information. For example, under the definition of backfitting in 10 CFR 50.109(a)(1) protection is accorded to nuclear power plant licensees against changes in, or new requirements and guidance on, *inter alia,* ''procedures or organization required to . . . operate a facility.'' Procedures governing the transportation of materials off of the facility site cannot reasonably be viewed as constituting such facility operating procedures. The backfitting and issue finality provisions applicable to other materials licensees are written in an analogous fashion. Therefore, changes to the guidance on compliance with 10 CFR part 95—even if imposed on these materials licensees who are protected by backfitting or issue protection provisions in 10 CFR part 52 (see the discussion in item 2)—would not constitute backfitting or a violation of issue finality provisions under 10 CFR part 52.

2. Even if the NRC were to conclude that materials licensees are accorded backfitting protection with respect to procedures governing transportation of classified information, changes in guidance would not constitute backfitting as defined in the various NRC backfitting provisions unless imposed on materials licensees. As described earlier, the NRC staff does not intend to impose or apply the draft guidance in DG–7005, if finalized, to existing licensees who already have NRC-approved transportation security plans (the exception is where a licensee makes changes to or proposes to amend such plans; the backfitting and issue finality implications are discussed in item 3 below). Given this current lack of staff intention to impose the guidance in DG–7005, the issuance of the draft regulatory guide in final form would not constitute backfitting or a violation of issue finality provisions under 10 CFR part 52. If, in the future, the staff seeks to impose a position in the draft regulatory guide (if finalized) on holders of already issued holders of licenses in a manner which constitutes backfitting or does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the applicable backfitting provision or address the criteria for avoiding issue finality as described applicable issue finality provision.

3. A licensing basis change voluntarily initiated by a licensee is not considered to be backfitting. In such cases, the policy considerations underlying the NRC's backfitting provisions, *viz.* regulatory stability and predictability concerning the terms of an NRC approval, are not applicable where the licensee itself voluntarily seeks a change to its licensing basis. This rationale is reflected in a July 14, 2010, Letter from the NRC General Counsel to NEI's General Counsel (ADAMS Accession No. ML101960180).

4. Even if the NRC were to conclude that materials licensees are accorded backfitting protection with respect to procedures governing transportation of classified information, applicants and potential/future applicants for such materials licenses are not, with certain exceptions not relevant here, protected under either the various NRC backfitting provisions or the issue finality provisions under 10 CFR part 52. This is because neither the backfitting provisions nor the issue finality provisions under 10 CFR part 52 were intended for every NRC action which substantially changes the expectations of current and future applicants.

Dated at Rockville, Maryland, this 18th day of April, 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–09442 Filed 4–24–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0093]

Medical Evaluation of Licensed Personnel for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1310, ''Medical Evaluation of Licensed Personnel for Nuclear Power Plants,'' which would be Revision 4 to Regulatory Guide (RG) 1.134. The NRC proposes to update RG 1.134 based upon the regulatory experience gained since Revision 3 of RG 1.134 was issued and to endorse the 2013 revision to the underlying consensus standard, ANSI/ANS 3.4, ''Medical Certification and Monitoring of Personnel Requiring Licenses for Nuclear Power Plants.'' The guide helps to ensure that medical certifications (and related medical evidence) are sufficient to meet the NRC's nuclear power reactor operator licensing requirements.

DATES: Submit comments by May 27, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

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–2014–0093. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lawrence Vick, 301–415–3181, email: *Lawrence.Vick@nrc.gov,* or Richard Jervey, 301/251–7404, email: *Richard.Jervey@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0093 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0093.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the ADAMS Public Documents collection 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 draft regulatory guide is available electronically under ADAMS Accession Number ML13352A278. The regulatory analysis may be found in ADAMS under Accession No. ML13352A279.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0093 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Medical Evaluation of Licensed Personnel for Nuclear Power Plants,'' is temporarily identified by its task number, DG–1310. Draft regulatory guide, DG–1310, is proposed Revision 4 of RG 1.134. The guidance is intended for use by nuclear power plant license holders under part 50 of Title 10 of the Code of Federal Regulations (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' Licensees of these facilities are required under 10 CFR 50.54, ''Conditions of Licensees,'' to use qualified licensed operators as described in 10 CFR Part 55, ''Operators' Licenses.''

Regulatory Guide 1.134, ''Medical Evaluation of Licensed Personnel for Nuclear Power Plants,'' Revision 3, was issued in 1998 to identify that the contemporary version of consensus standard ANSI/ANS 3.4 (1996), ''Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants,'' is a method acceptable to the staff for complying with those portions of the NRC's regulations associated with approval or acceptance of medical examination certifications at nuclear power plants.

The consensus standard ANSI/ANS 3.4 was issued in 2013 to provide clarification and comprehensive medical guidance to improve industry's consistent implementation of the

standard. This included clarification of specific minimum requirements, disqualifying conditions, conditional restrictions, examination methods, and monitoring methods for each medical area. The 2013 issue also includes consideration of other industry medical standards, including those of the U.S. Department of Transportation and Federal Aviation Administration as well as medical criteria that reflect progressions in medical science including updated terminology, current medical practices, criteria for normality, and risk assessments.

Regulatory Guide 1.134 is under revision to identify to licensees that ANSI/ANS 3.4–2013 is acceptable for their use. The guide helps to ensure that medical certifications (and related medical evidence) used to meet the operator licensing requirements of 10 CFR part 55 are sufficient with respect to (1) an applicant's or operator licensee's medical examination, as described in 10 CFR 55.21, ''Medical Examination''; (2) a facility licensee's medical certification, as described in 10 CFR 55.23, ''Certification''; (3) an operator licensee's incapacitation because of disability or illness, as described in 10 CFR 55.25, ''Incapacitation Because of Disability or Illness''; (4) a facility licensee's medical documentation, as described in 10 CFR 55.27, ''Documentation''; (5) the NRC's disposition of an initial application for an operator license, as described in 10 CFR 55.33(a)(1) and (b); and (6) renewal of operator licenses, as described in 10 CFR 55.57(a)(6) and (b)(1).

III. Backfitting and Issue Finality

This DG, if finalized, would provide updated guidance on the methods acceptable to the NRC staff for complying with the NRC's regulations associated with approval or acceptance of the medical assessment of an applicant for or holder of an operator or senior operator license at a nuclear power plant. The draft guide would apply to current and future applicants for and holders of power reactor licenses under 10 CFR parts 50 and 52 and power reactor operating licenses under 10 CFR part 55. Issuance of this DG in final form would not constitute backfitting under 10 CFR part 50 and would not be otherwise inconsistent with the issue finality provisions in 10 CFR Part 52. As discussed in the ''Implementation'' section of this DG, the NRC has no current intention to impose the RG on current holders of 10 CFR part 50 operating licenses or 10 CFR part 52 combined licenses. Part 55 does not contain backfitting or issue finality regulations, and power reactor operating licensees are not protected by the backfitting provisions in 10 CFR 50.109 or the 10 CFR part 52 issue finality provisions because neither 10 CFR 50.109 nor 10 CFR part 52 applies to 10 CFR part 55 power reactor operating licensees.

This RG could be applied to applications for 10 CFR part 50 operating licenses, 10 CFR part 52 combined licenses, or 10 CFR part 55 operator licenses. Such action would not constitute backfitting as defined in 10 CFR 50.109 or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants are not within the scope of entities protected by 10 CFR 50.109 or the relevant issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 18th day of April, 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–09443 Filed 4–24–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0068]

Draft Program-Specific Guidance About Master Materials Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising its licensing guidance for Master Materials Licenses. The NRC is requesting public comment on draft NUREG–1556, Volume 10, Revision 1, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Master Materials Licenses.'' The document has been updated from the previous revision to include safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices. This document is intended for use by applicants, licensees, and the NRC staff.

DATES: Submit comments by May 27, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to assure consideration of comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0068. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN–06–A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tomas Herrera, Office of Federal and State Materials and Environmental Management Programs; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7138; email: *Tomas.Herrera@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0068 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0068.
- *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 draft NUREG–1556, Volume 10, Revision 1, is available in ADAMS under Accession No. ML14105A093.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The draft NUREG–1556, Volume 10, Revision 1, is also available on the

NRC's public Web site on the: (1) ''Consolidated Guidance About Materials Licenses (NUREG–1556)'' page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/;* and the (2) ''Draft NUREG-Series Publications for Comment'' page at *http://www.nrc.gov/public-involve/doc-comment.html#nuregs.*

B. Submitting Comments

Please include Docket ID NRC–2014–0068 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want 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 submissions into ADAMS.

II. Further Information

The NUREG provides guidance to for existing Master Materials Licenses and assisting Federal agencies in preparing applications for a Master Materials License. The NUREG also provides the NRC with criteria for evaluating a license application. The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG–1556, Volume 10, Revision 1, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Master Materials Licenses.'' These comments will be considered in the final version or subsequent revisions.

Dated at Rockville, Maryland, this 18th day of April, 2014.

For the U.S. Nuclear Regulatory Commission.

Margie Kotzalas,

Acting Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–09487 Filed 4–24–14; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

OMB Approval of Information Collection; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of OMB approval of revised collection of information.

SUMMARY: The Office of Management and Budget has approved a revised collection of information under the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On March 11, 2014 (at 79 FR 13547), the Pension Benefit Guaranty Corporation (PBGC) published a final rule amending its regulation on Payment of Premiums (29 CFR part 4007). The amendment affected the collection of information under the regulation. On the same day, PBGC submitted the revised collection of information for review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. On April 11, 2014, OMB approved the revised collection of information under OMB control number 1212–0009; the approval expires April 30, 2017. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, DC, this 22nd day of April 2014.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–09484 Filed 4–24–14; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Representative Payee Survey, RI 38–115, 3206–0208

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0208, Representative Payee Survey. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on November 7, 2013 at Volume 78 FR 66973 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 27, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Representative Payee Survey is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Representative Payee Survey.

OMB Number: 3206–0208.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 11,000.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 3667 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–09495 Filed 4–24–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Verification of Full-Time School Attendance, RI 25–49, 3206–0215

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0215, Verification of Full-Time School Attendance. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until June 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Retirement Services, Operations Support, Office of Personnel Management, Union Square Room 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler or via email to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–AC, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

RI 25–49 is used to verify that adult student annuitants are entitled to payment. The Office of Personnel Management must confirm that a full-time enrollment has been maintained.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Verification of Full-Time School Attendance.

OMB Number: 3206–0215.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 10,000.

Estimated Time Per Respondent: 60 minutes.

Total Burden Hours: 10,000 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–09490 Filed 4–24–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Standard Form 2809, Health Benefits Election Form, 3206–0160

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Healthcare & Insurance/Federal Employee Insurance Operations (FEIO), Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0160, Health Benefits Election Form. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until June 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Healthcare & Insurance/FEIO, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415, Attention: Jay Fritz or sent via email to *Jay.Fritz@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20503, Attention: Cyrus S. Benson or sent via email to *Cyrus.Benson@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Health Benefits Election Form is used by Federal employees, annuitants other than those under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) including individuals receiving benefits from the Office of Workers' Compensation Programs, former spouses eligible for benefits under the Spouse Equity Act of 1984, and separated employees and former dependents eligible to enroll under the Temporary Continuation of Coverage provisions of the FEHB law (5 U.S.C. 8905a). A different form (OPM 2809) is used by CSRS and FERS annuitants whose health benefit enrollments are administered by OPM's Retirement Operations.

Analysis

Agency: Federal Employee Insurance Operations, Office of Personnel Management.

Title: Health Benefits Election Form.

OMB Number: 3206–0160.

Frequency: On ocassion.

Affected Public: Individuals or households.

Number of Respondents: 18,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 9,000.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–09493 Filed 4–24–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Life Insurance Election, SF 2817, 3206–0230

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Healthcare & Insurance/Federal Employee Insurance Operations (FEIO), Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0230, Life Insurance Election. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until June 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Healthcare & Insurance/FEIO, Office of Personnel Management, 1900 E. Street NW., Room 3459, Washington, DC 20415, Attention: Christopher Meuchner or sent via email to *Christopher.Meuchner@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E. Street NW., Room 3316–AC, Washington, DC 20503, Attention: Cyrus S. Benson or sent via email to *Cyrus.Benson@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Standard Form 2817 is used by Federal employees and assignees (those who have acquired control of an employee/annuitant's coverage through an assignment or ''transfer'' of the ownership of the life insurance). Clearance of this form for use by active Federal employees is not required according to the Paperwork Reduction Act (Pub. L. 98–615). The Public Burden Statement meets the requirements of 5 CFR 1320.8(b)(3). Therefore, only the use of this form by assignees, i.e. members of the public, is subject to the Paperwork Reduction Act.

Analysis

Agency: Federal Employee Insurance Operations, Office of Personnel Management.

Title: Life Insurance Election.

OMB Number: 3206–0230.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 150.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 38 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–09494 Filed 4–24–14; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–25 and CP2014–48; Order No. 2060]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting the addition of Priority Mail Express Contract 18 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 28, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 18 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2014–25 and CP2014–48 to consider the Request pertaining to the proposed Priority Mail Express Contract 18 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than April 28, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014–25 and CP2014–48 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than April 28, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

[1] Request of the United States Postal Service to Add Priority Mail Express Contract 18 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, April 18, 2014 (Request).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–09370 Filed 4–24–14; 8:45 am]

BILLING CODE 7710–FW–P

REAGAN-UDALL FOUNDATION FOR THE FOOD AND DRUG ADMINISTRATION

[BAC 416404]

Annual Public Meeting; Correction

ACTION: Notice of annual meeting; correction.

SUMMARY: The Reagan-Udall Foundation for the Food and Drug Administration (FDA), published a document in the **Federal Register** of April 3, 2014, concerning the Foundation's Annual Open Public Meeting on May 14, 2014. The document contained the incorrect address for the meeting location.

FOR FURTHER INFORMATION CONTACT: Jane Reese-Coulbourne, 202–828–1206.

Correction

In the **Federal Register** of April 3, 2014, in FR Doc. 2014–07484, in the **ADDRESSES** section, correct the **ADDRESSES** section to read:

ADDRESSES: The public meeting will be held at the 901 East Conference Center, The Pew Charitable Trusts, 901 E St. NW., Washington, DC 20004.

Dated: April 21, 2014.

Jane Reese-Coulbourne,

Executive Director, Reagan-Udall Foundation for the FDA.

[FR Doc. 2014–09389 Filed 4–24–14; 8:45 am]

BILLING CODE 4164–04–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 0–2, Form ADV–NR; OMB Control No. 3235–0240, SEC File No. 270–214.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 0–2 and Form ADV–NR under the Investment Advisers Act of 1940.'' Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and or regulatory actions against investment advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or non-resident managing agent of an SEC-registered adviser and of an exempt reporting adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR imposes a total burden of approximately 1.0 hour for an adviser. Based on our experience with these filings, we estimate that we will receive 47 Form ADV–NR filings annually. Based on the 1.0 hour per respondent estimate, the Commission staff estimates a total annual burden of 47 hours for this collection of information.

Rule 0–2 and Form ADV–NR do not require recordkeeping or records retention. The collection of information requirements under the rule and form is mandatory. The information collected pursuant to the rule and Form ADV–NR is a filing with the Commission. This filing is not kept confidential and must be preserved until at least three years after termination of the enterprise. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 21, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09398 Filed 4–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71977; File No. SR–BX–2014–019]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Listing PHLX Proprietary Products

April 21, 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 April 10, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 certain rules in order to permit the trading of options overlying NASDAQ OMX PHLX LLC (''Phlx'') proprietary indexes and Phlx U.S. Dollar-Settled Foreign Currencies on BX. The Exchange is proposing to amend the following BX Rules: Chapter I, Section 1 (Definitions), Chapter III, Section 7 (Position Limits), Section 9 (Exercise Limits), Chapter IV, Section 3 (Criteria for Underlying Securities), Section 6 (Series of Options Contracts Open for Trading), Section 9 (U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value), Chapter VI, Section 4 (Meaning of Premium Quotes and Orders), Chapter VIII, Section 3 (Delivery and Payment), Chapter XIV, Section 5 (Position Limits for Broad-Based Index Options), Section 7 (Position Limits for Industry and Micro-Narrow Based Index Options) and Section 11 (Terms of Index Options Contracts).

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.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 purpose of the proposed rule change is to amend BX's Rules to include provisions to permit the trading of options overlying Phlx proprietary indexes on BX[3] and Phlx U.S. Dollar-Settled Foreign Currencies.[4] Today, Phlx has various rules which pertain to the listing of options overlying Phlx proprietary indexes and U.S. Dollar-Settled Foreign Currencies. The Exchange proposes to list these Phlx proprietary products on the Exchange in the same manner and with the same terms as these options are traded on Phlx.

Phlx Proprietary Indexes

Position Limits

The Exchange is proposing to amend various BX Rules to permit the listing of Phlx proprietary indexes. The Exchange is proposing to amend Chapter XIV, which pertains to indexes, specifically at Section 5 regarding position limits. The Exchange is proposing to amend this Rule to require Options Participants to comply with the rules of Phlx with respect to position limits for ''PHLX proprietary products.'' The Exchange is proposing a similar amendment to Section 7 relating to micro-narrow based indexes. Options Participants would be required to comply with Phlx position limits relating to micro-narrow index options when transacting options overlying Phlx proprietary products. Options Participants would be required to comply with Phlx rules with respect to position limits for Phlx proprietary products.

Definition

The Exchange is also proposing to amend Chapter I, Section 1 which contains definitions to include the definition of closing index value. Specifically, the Exchange is adding the following definition for closing index value: ''The [t]erm 'closing index value' in respect of a particular index means the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise (P.M.-settled), unless the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.-settled).'' This definition is the same definition that appears in Phlx Rules.[5]

Listing of Long-Term Index Options

Finally, the Exchange proposes to amend Chapter XIV, Section 11 to amend the Terms of Index Options Contracts to amend the text related to Long Term Index Options Series. Today, BX may list long-term index options series that expire from twelve to sixty months from the date of issuance. The Exchange proposes to amend this timeframe to mirror the timeframe for Phlx index options which is nine to sixty months at Chapter XIV, Section 11(b)(1).[6] In addition, the Exchange proposes to amend Chapter XIV, Section 11(b)(1)(i) to state that ''Strike price interval, bid/ask differential and continuity Rules shall not apply to such options series until the time to expiration is less than *nine (9)* months.'' Today, the timeframe is twelve months. The Exchange is conforming this text to the amendment in Section 11(b)(1).

Phlx U.S. Dollar-Settled Foreign Currencies

Position Limits

The Exchange is proposing to amend various BX Rules to permit the listing of Phlx proprietary U.S. Dollar-Settled Foreign Currencies. The Exchange is proposing to amend Chapter III, which pertain to indexes, specifically at Section 7 regarding position limits. The Exchange is proposing to amend the rule to provide that no Options Participant shall make, for any account

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Today, Phlx lists the following proprietary indexes on its market: SIG Oil Exploration & Production Index™ (EPX℠); PHLX Semiconductor Sector℠ (SOX℠); PHLX Housing Sector™ (HGX℠); PHLX Oil Service Sector℠ (OSX℠); Phlx Utility Sector℠ (UTY℠); and PHLX Gold/Silver Sector℠ (XAU℠).

[4] Today, Phlx lists the following proprietary U.S. Dollar-Settled Foreign Currencies: XDA (Australian Dollar); XDB (British Pound); XDC (Canadian Dollar); XDE (Euro); XDN (Japanese Yen); XDS (Swiss Franc); and XDZ (New Zealand Dollar).

[5] *See* Phlx Rule 1000A(a)(8).

[6] *See* Phlx Rule 1101A.

in which it has an interest or for the account of any Customer, an opening transaction on any exchange if the Options Participant has reason to believe that as a result of such transaction the Options Participant or its Customer would, acting alone or in concert with others, directly or indirectly exceed the applicable position limit fixed from time to time by Phlx with respect to U.S. Dollar-Settled Foreign Currency Options.'' [7] The Exchange is proposing a similar amendment to Section 9 related to Exercise Limits.[8] These amendments would permit the Exchange to list these U.S. Dollar-Settled Foreign Currencies with the same position and exercise limits as exist on Phlx today.

Listing Criteria

The Exchange is proposing to amend Chapter IV, Section 3(n) to list the criteria for underlying securities for U.S. Dollar-Settled Foreign Currency Options. This criteria is the same as the criteria for listing proprietary currencies on Phlx.[9] Specifically, the Exchange proposes to add the following criteria: the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, the U.S. dollar, the Mexican peso, the Euro, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona may be approved as underlying foreign currencies for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors. In the event that any of the sovereign governments or the European Economic Community's European Monetary System issuing any of the above-mentioned currencies should issue a new currency intended to replace one of the above-mentioned currencies as the standard unit of the official medium of exchange of such government, such new currency also may be approved as an underlying foreign currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors. Options trading in such new currency may occur simultaneously with options trading in any of the above-mentioned currencies; provided, however, that the Exchange shall withdraw its approval of options transactions in the currency which is intended to be replaced by such new currency as expeditiously as it deems consistent with the maintenance of a fair and orderly market or the protection of investors. The Exchange may determine to withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event that the Exchange effects such a withdrawal, the Exchange shall not open for trading any additional series of options of the class covering that underlying foreign currency.

The Exchange proposes to amend the Supplementary Material to Chapter IV, Section 6 by adding new Supplementary Material .09 with listing qualifications for U.S. Dollar-Settled Foreign Currency options which are identical to those listing criteria on Phlx.[10] Specifically, within each class of approved U.S. Dollar-Settled Foreign Currency options, the Exchange may open for trading series of options expiring in consecutive calendar months (''consecutive month series'') and series of options expiring at three-month intervals (''cycle month series''), as provided in Supplementary Material at .09. Prior to the opening of trading in any series of U.S. Dollar-Settled Foreign Currency Options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

The Supplementary Material to proposed Chapter IV, Section 6(A) [sic] states, with respect to each class of U.S. Dollar-Settled Foreign Currency options, series of options having up to four consecutive expiration months may be opened for trading simultaneously, with the shortest-term series initially having no more than two months to expiration. Additional consecutive month series of the same class may be opened for trading on the Exchange at or about the time a prior consecutive month series expires, and the expiration month of each such new series shall normally be the month immediately succeeding the expiration month of the then outstanding consecutive month series of the same class of options having the longest remaining time to expiration.

Supplementary Material to proposed Chapter IV, Section 6(B) [sic] states, the Exchange may designate one expiration cycle for each class of U.S. Dollar-Settled Foreign Currency option. An expiration cycle shall consist of four calendar months (''cycle months'') occurring at three-month intervals. With respect to any particular class of U.S. Dollar-Settled Foreign Currency option, series of options expiring in the four cycle months designated by the Exchange for that class may be opened for trading simultaneously, with the shortest-term series initially having approximately three months to expiration. Additional cycle month series of the same class may be opened for trading on the Exchange at or about the time a prior cycle month series expires, and the expiration month of each such new series shall normally be approximately three months after the expiration month of the then outstanding cycle month series of the same class of options having the longest remaining time to expiration.

The Supplementary Material to proposed Chapter IV, Section 6(C) [sic] states, the Exchange may list, with respect to any U.S. Dollar-Settled Foreign Currency, options having up to three years from the time they are listed until expiration. There may be up to ten options series, options having up to thirty-six months from the time they are listed until expiration. There may be up to six additional expiration months. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months. For each expiration month opened for trading of U.S. Dollar-Settled Foreign Currency options, in addition to the strike prices listed by the Exchange pursuant to Supplementary Material .09 to proposed Chapter IV, Section 6, the Exchange shall also list a single strike price of $0.01. Additional series of options of the same class may be opened for trading on the Exchange as the market price of the underlying foreign currency moves substantially from the initial exercise price or prices. The opening of a new series of options on the Exchange shall not affect any other series of options of the same class previously opened.

The Exchange may initially list exercise strike prices for each expiration of U.S. Dollar-Settled Foreign Currency options on currencies within a 40 percent band around the current Exchange Spot Price at fifty cent ($.50) intervals. Thus, if the Exchange Spot Price of the Euro were at $100.00, the Exchange would list strikes in $.50 intervals up to $120.00 and down to $80.00, for a total of eighty-one strike prices available for trading. As the Exchange Spot Price for U.S. Dollar-Settled Foreign Currency options moves, the Exchange may list new strike prices that, at the time of listing, do not

[7] *See* proposed Rule at Chapter III, Section 7(a)(iv).

[8] *See* proposed Rule at Chapter III, Section 9(a)(iv).

[9] *See* Phlx Rules 1009(c) and 1010 at Commentary .06.

[10] *See* Rule 1012(a)(iii) and Commentary .06 and .07 to Rule 1012. *See also* Rule 1000(b)(16).

exceed the Exchange Spot Price by more than 20 percent and are not less than the Exchange Spot Price by more than 20 percent. For example, if at the time of initial listing, the Exchange Spot Price of the Euro is at $100.00, the strike prices the Exchange will list will be $80.00 to $120.00. If the Exchange Spot Price then moves to $105.00, the Exchange may list additional strikes at the following prices: $105.50 to $126.00. The exercise price of each series of U.S. Dollar-Settled Foreign Currency options opened for trading on the Exchange normally shall be fixed at a price per unit which is reasonably close to the current Exchange Spot Price per unit of the underlying foreign currency in the foreign exchange market at or before the time such series of options is first opened for trading on the Exchange, as determined by finding the arithmetic mean of Exchange Spot Prices.

The Exchange defines the term ''Exchange Spot Price'' similar to the Phlx Rule 1000(b)(16), ''in respect of an option contract on a foreign currency means the cash market spot price, for the sale of one foreign currency for another, quoted by various foreign exchange participants for the sale of a single unit of such foreign currency for immediate delivery that is calculated from the foreign currency price quotation reported by the foreign currency price quotation dissemination system selected by the Exchange, to which an appropriate multiplier is applied. The multiplier(s) will be: 100 for the British pound, the Euro, the Swiss franc, the Canadian dollar, the Australian dollar, the Brazilian real, and the New Zealand dollar; 1,000 for the Chinese yuan, the Danish krone, the Mexican peso, the Norwegian krone, the South African rand, and the Swedish krona; 10,000 for the Japanese yen and the Russian ruble; and 100,000 for the South Korean won.''

Closing Settlement Value

The Exchange proposes to add a new Chapter IV, Section 9 to address Closing Settlement Value. The Exchange is proposing to add language similar to that contained in a Phlx Rule.[11] Specifically, the Exchange is adding language which states, U.S. Dollar-Settled Foreign Currency options are settled in U.S. dollars. The closing settlement value for the U.S. Dollar-Settled Foreign Currency options on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona shall be the Exchange Spot Price at 12:00:00 Eastern Time (noon) on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day prior to the expiration date unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. Neither the Exchange, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current settlement value or the closing settlement value resulting from an act, condition, or cause beyond the reasonable control of the Exchange including but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission, or delay in the reports of transactions in one or more underlying currencies or any error, omission or delay in the reports of the current settlement value or the closing settlement value by the Exchange. The Exchange shall post the closing settlement value on its Web site or disseminate it through one or more major market data vendors.

Minimum Increments

The Exchange also proposes to amend Chapter VI, Section 4 to add new sections (c) and (d) to add rule text similar to that of Phlx [12] to address minimum increments for quoting and bids and offers. Specifically, all options on foreign currencies where the underlying foreign currency is not the U.S. dollar shall have a minimum increment of $.01. In the case of options on foreign currencies, all bids or offers shall be expressed in terms of U.S. dollars per unit of the underlying foreign currency. E.g., a bid of ''3.25'' for a premium on a $170 strike price option on the British pound shall represent a bid to pay $325 per option contract.

Delivery and Payment

The Exchange proposes to amend Chapter VIII, Section 3 to add a new section (d) to address delivery and payment similar to a Phlx Rule.[13] Specifically, in accordance with the applicable rules of The Options Clearing Corporation (''OCC''), upon exercise of an in-the-money U.S. Dollar-Settled Foreign Currency option structured as a call, the holder receives, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the U.S. Dollar-Settled Foreign Currency options contract multiplied by the number of units of currency covered by the contract. For a U.S. Dollar-Settled Foreign Currency option structured as a put, the holder receives U.S. dollars representing the excess of the exercise price over the closing settlement value of the U.S. Dollar-Settled Foreign Currency option contract multiplied by the number of units of foreign currency covered by the contract.

Definition

The Exchange also proposes to add a new definition to Chapter I, Section 1 for foreign currency. This definition is the same definition that appears in Phlx Rules.[14] The Exchange proposes to define foreign currency to mean means the standard unit of the official medium of exchange of a sovereign government including the United States Government (e.g., the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, the Swedish krona, or the United States dollar) or the Euro.

Surveillance and Capacity

The Exchange represents that it has the necessary systems capacity to support listing these proprietary Phlx products on the Exchange. The Exchange represents that it has an adequate surveillance program in place. The Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, which was modernized in 2008, and may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. ISG members include all of the U.S. registered stock and options markets and work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

[11] *See* Phlx Rule 1057.

[12] *See* Phlx Rules 1033(b)(ii) and 1034(a)(ii).

[13] *See* Phlx Rule 1044. BX Rules at Chapter VIII, Section 3 contain a Delivery and Payment rule which would be supplemented with the above-described rule text.

[14] *See* Phlx Rule 1000(b)(13).

Incorporation of Phlx Rules

BX proposes herein to incorporate by reference as BX Options Rules certain Phlx such that BX members will comply with a BX rule by complying with the Phlx rule referenced. In connection with its proposal to incorporate Phlx rules by reference, BX will file a request, pursuant to Rule 240.0–12,[15] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those BX Options Rules that are effected solely by virtue of a change to a cross-referenced Phlx rule. BX agrees to provide written notice to Options Participants of any amendments to Phlx rules that are incorporated by reference.[16] BX will notify Participants whenever Phlx proposes to change a rule that has been incorporated by reference into the BX Options Rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposal would allow Phlx proprietary indexes and U.S. Dollar-Settled Foreign Currency options to be traded on BX, in addition to Phlx. Investors would have an additional venue in which to trade these proprietary products. The Exchange seeks to list and trade these proprietary products utilizing the same terms and conditions as Phlx. The proposed rules mirror the terms and conditions of Phlx proprietary products as they are listed and traded on Phlx. The Exchange believes that this will serve to minimize investor confusion as the products would be traded in the same manner with the same position limits, increments and listing conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange intends to list and trade options on Phlx proprietary products on BX in the same manner that these products are traded on Phlx.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[19] of the Act and Rule 19b–4(f)(6)(iii) thereunder.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: Necessary or appropriate in the public interest; for the protection of investors; or otherwise in furtherance of the purposes of the Act. 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–BX–2014–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–019. 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–BX–2014–019 and should be submitted on or before May 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09392 Filed 4–24–14; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 240.0–12.

[16] BX will provide such notice through a posting on the same Web site location where BX posts its own rule filings pursuant to Rule 19b–4(1) under Act, within the timeframe required by that Rule. The Web site posting will include a link to the location on the Phlx Web site where those SROs' proposed rule changes are posted.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71980; File No. SR–NFA–2014–02]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretive Notice Entitled ''NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts''

April 21, 2014.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b-7 under the Exchange Act,[2] notice is hereby given that on April 7, 2014, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

On December 5, 2013, NFA requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary.[3] On March 21, 2014, the CFTC notified NFA that the CFTC had determined not to review the proposed rule change.[4]

I. Self-Regulatory Organization's Description and Text of the Proposed Rule Change

The amendments to NFA's Interpretive Notice 9050 entitled ''NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts'' (''Interpretive Notice 9050'') make a minor change to the settlement section of the risk disclosure statement for security futures contracts (''Statement'') to reflect an alternative settlement and clearance process that will be used for a new security futures product (''SFP''). The proposed rule change would accommodate the clearing of physically-settled single stock futures (''SSFs'') on a shorter time frame than three business days after the maturity date of each such physically-settled SSF.

The text of the proposed rule change is available on NFA's Web site at *www.nfa.futures.org,* at the principal office of NFA 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, NFA 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. NFA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 15A(k) of the Exchange Act[5] makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members (''Members'') who are registered as brokers or dealers under Section 15(b)(11) of the Exchange Act.[6] NFA's Interpretive Notice 9050 applies to all Members and persons associated with Members (''Associates'') who meet the criteria outlined in Interpretive Notice 9050.

Interpretive Notice 9050 requires NFA Members and Associates who are registered as brokers or dealers under Section 15(b)(11) of the Exchange Act to provide the Statement to a customer at or before the time the Member approves the account to trade SFPs. The Statement is a uniform disclosure that was jointly developed in 2002 by NFA, the Financial Industry Regulatory Authority (''FINRA'') (then known as NASD) and a number of securities and futures exchanges. Among other things, the Statement describes the features of SFPs, including the settlement process.

The amendment makes a minor change to the settlement section of the Statement to reflect an alternative settlement process that will be used for a new SFP, namely SSFs. In addition, FINRA intends to make the same modifications to its risk disclosure statement for security futures contracts to cover its members, and has proposed a similar rule change.

Amendments to Interpretive Notice 9050 were previously filed with the SEC in SR–NFA–2002–05, Exchange Act Release No. 34–46613 (October 7, 2002), 67 FR 64176 (October 17, 2002); SR–NFA–2002–06, Exchange Act Release No. 34–47150 (January 9, 2003), 68 FR 2381 (January 16, 2003); SR–NFA–2007–07, Exchange Act Release No. 34–57142 (January 14, 2008), 73 FR 3502, (January 18, 2008); SR–NFA–2010–02, Exchange Act Release 34–62624 (August 2, 2010), 75 FR 47666 (August 6, 2010); and SR–NFA–2010–03, Exchange Act Release 34–62651 (August 4, 2010), 75 FR 48393 (August 10, 2010).

2. Statutory Basis

NFA believes that the proposed rule change is consistent with Section 15A(k)(2)(B) of the Exchange Act.[7] That section requires NFA to have rules that are 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, including rules governing sales practices of security futures products. NFA believes the proposed rule change accomplishes this by changing the Statement to include reference to an alternative settlement process that will be for a new SFP, namely SSFs.

B. Self-Regulatory Organization's Statement on Burden on Competition

NFA does not believe the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act as amended.[8] The proposal does not impose new requirements on Members, but rather will change the settlement section of the Statement to reflect an alternative settlement process that will be used for a new SFP, namely SSFs.

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

NFA filed the proposed rule change with the CFTC on December 5, 2013.[9]

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* Letter dated December 5, 2013, from Thomas W. Sexton, III, Senior Vice President/General Counsel, NFA, to Melissa D. Jurgens, Secretary, Office of the Secretariat, CFTC.

[4] *See* Letter dated March 21, 2014, from Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC, to Thomas W. Sexton, III, Senior Vice President/General Counsel, NFA.

[5] 15 U.S.C. 78o–3(k).

[6] 15 U.S.C. 78o(b)(11).

[7] 15 U.S.C. 78o–3(k)(2)(D).

[8] 15 U.S.C. 78q–1(b)(3)(l).

[9] *See* Letter dated December 5, 2013, from Thomas W. Sexton, III, Senior Vice President/

Continued

On March 21, 2014, the CFTC notified NFA that the CFTC had determined not to review the proposed rule change.[10]

NFA did not file the proposed rule changes concurrently with the SEC. Instead, NFA filed the proposed rule changes on April 7, 2014. Section 19(b)(7)(B) of the Exchange Act provides that a proposed rule change filed with the SEC pursuant to Section 19(b)(7)(A) of the Exchange Act shall be filed concurrently with the CFTC.

Section 19(b)(7)(C) of the Exchange Act provides, *inter alia,* that ''[a]ny proposed rule change of a self-regulatory organization that has taken effect pursuant to [Section 19(b)(7)(B) of the Exchange Act] may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal law.'' At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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–NFA–2014–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NFA–2014–02. 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NFA. 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–NFA–2014–02 and should be submitted on or before May 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09394 Filed 4–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71976; File No. SR–NFA–2014–01]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Interpretive Notice to NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for SFPs

April 21, 2014.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–7 under the Exchange Act,[2] notice is hereby given that on April 7, 2014, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also filed this proposed rule change on November 20, 2012 with the Commodity Futures Trading Commission (''CFTC'').

NFA, on November 20, 2012, requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary.[3] On February 14, 2013, the CFTC notified NFA that it had determined not to review the proposed rule change.[4]

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The amendments to the Interpretive Notice entitled ''NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products'' (''Notice'') extends the relief from having to take a proficiency exam to engage in security futures activities from December 31, 2012 to December 31, 2015.

The text of the Interpretive Notice is available on NFA's Web site at *www.nfa.futures.org*, the Commission's Web site at *www.sec.gov*, the self-regulatory organization's 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, NFA 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. NFA 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

Section 15A(k) of the Exchange Act[5] makes NFA a national securities association for the limited purpose of

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General Counsel, NFA, to Melissa D. Jurgens, Secretary, Office of the Secretariat, CFTC.

[10] *See* Letter dated March 21, 2014, from Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC, to Thomas W. Sexton, III, Senior Vice President/General Counsel, NFA.

[11] 17 CFR 200.30–3(a)(73).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* Letter dated November 20, 2012 from Thomas W. Sexton, III, Senior Vice President/General Counsel, NFA to Sauntia Warfield, Assistant Secretary, Office of the Secretariat, CFTC.

[4] *See* Letter dated February 14, 2013 from Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, to Thomas W. Sexton, III, Senior Vice President/General Counsel, NFA.

[5] 15 U.S.C. 78o–3(k).

regulating the activities of NFA Members (''Members'') who are registered as brokers or dealers under Section 15(b)(11) of the Exchange Act.[6] NFA's Notice entitled: ''NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products'' applies to all Members who meet the criteria in the Interpretive Notice and could apply to Members registered under Section 15(b)(11) of the Exchange Act.

The Commodity Futures Modernization Act of 2000 amended the Securities Exchange Act of 1934 to require NFA to ''have rules that ensure that members and natural persons associated with members meet such standards of training, experience and competence necessary to effect transactions in security futures products and are tested for their knowledge of securities and securities futures products.'' [7] In 2001 NFA and FINRA (then NASD) adopted temporary relief allowing registrants to qualify to engage in security futures activities by completing a training program rather than by taking an exam, which NFA codified in the Notice. The relief was extended three times and was set to expire on December 31, 2012.

NFA and FINRA proposed the three prior extensions, and the CFTC and SEC agreed to them,[8] because of the low trading volume in SFPs and the relatively few registrants engaging in security futures activities. These characteristics continue to make the imposition of a qualifications exam an inefficient option, and the same reasons are equally compelling today. Accordingly, the proposal revises the Interpretive Notice to extend the relief from having to take an exam from December 31, 2012 to December 31, 2015.[9]

Amendments to the Interpretive Notice regarding NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products were previously filed with the SEC in SR–NFA–2002–04, Exchange Act Release No. 34–46502 (Sep. 16, 2002), 67 FR 59587 (Sep. 23, 2002); SR–NFA–2003–03, Exchange Act Release No. 34–47825 (May 9, 2003), 68 FR 27128 (Mar. 19, 2002); SR–NFA–2003–04, Exchange Act Release No. 34–49054 (Jan. 12, 2004), 69 FR 2806, (Jan. 20, 2004); SR–NFA–2007–07, Exchange Act Release 34–57142 (Jan. 14, 2008), 73 FR 3502 (Jan. 18, 2008) and SR–NFA–2009–02, Exchange Act Release 34–61284 (Jan. 4, 2010), 75 FR 1431 (Jan. 11, 2010).

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k)(2)(D) of the Exchange Act.[10] That Section requires NFA to ''have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in SFPs and are tested for their knowledge of securities and securities futures products.'' Although the proposal extends relief from having to take an exam to engage in security futures activities, it still requires that training be completed before entering into such activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have little or no impact on competition. The proposed Interpretive Notice does not impose new requirements on Members, but rather extends the relief allowing registrants to qualify to engage in security futures activities by completing a training program rather than by taking an exam until December 31, 2015.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NFA filed the proposed rule change with the CFTC on November 20, 2012, and the proposed rule change became effective with the CFTC on February 21, 2013. NFA did not file the proposed rule change concurrent with the SEC. Instead, NFA filed the proposed rule change with the SEC on April 7, 2014.[11]

At any time within 60 days of the date of effectiveness [12] of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[13]

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–NFA–2014–01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NFA–2014–01. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NFA. 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

[6] 15 U.S.C. 78o(b)(11).

[7] Section 15A(k)(2)(D) of the Exchange Act.

[8] The Commission notes that the filings referred to by NFA were filed with the Commission pursuant to Section 19(b)(7) of the Exchange Act and thus were effective on filing by the NFA.

[9] FINRA staff has informed NFA that FINRA will amend its rules to incorporate the same three-year extension.

[10] 15 U.S.C. 78o–3(k)(2)(D).

[11] Section 19(b)(7)(B) of the Act provides that a proposed rule change filed with the SEC pursuant to section 19(b)(7)(A) of the Act shall be filed concurrently with the CFTC.

[12] Section 19(b)(7)(C) of the Act provides, *inter alia,* that ''[a]ny proposed rule change of a self-regulatory organization that has taken effect pursuant to [Section 19(b)(7)(B) of the Act] may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal law.''

[13] 15 U.S.C. 78s(b)(7)(C).

submissions should refer to File Number SR–NFA–2014–01, and should be submitted on or before May 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09391 Filed 4–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71983; File No. SR–NSX–2014–11]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule With Respect to Securities Priced at $1.00 or Greater

April 21, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2014, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1. Specifically, the Exchange is seeking to amend Section I. (Transaction Fees and Rebates) pertaining to the fees charged to Exchange Equity Trading Permit (''ETP'')[3] Holders for providing liquidity and the rebates paid to ETP Holders for removing liquidity in securities priced at $1.00 or more.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the current Fee Schedule, Section I. to: (i) change the fee structure applicable to ETP Holders providing liquidity on the Exchange in securities priced at $1.00 and above, retiring the current tiered fee structure and adopting a single fee amount of $0.0018 per executed share to be paid by ETP Holders for providing liquidity (a ''Maker'') in any security priced at $1.00 and above, across all Tapes[4] and irrespective of the order type used by the ETP Holder to add liquidity; and (ii) pay a per executed share rebate of $0.0017 to ETP Holders removing liquidity in any security, across all Tapes and irrespective of any order types removed by the liquidity ''Taker.''

Prior to these proposed changes, the Fee Schedule provided that, for securities prices at $1.00 and above, the ETP Holder paid a per share fee for providing liquidity in an amount equal to or surpassing certain specified percentages of the ETP Holder's total consolidated volume (''TCV'') in one day.[5] The term ''TCV'' was defined in the Fee Schedule as the total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan. Under the Fee Schedule prior to the instant amendment, there was a total of seven fee tiers based on specified percentages of TCV; the highest fee for adding liquidity was $0.0018 per executed share, based on the ETP Holder adding less than 0.08% of TCV of liquidity in one day. The six additional tier levels operated to reduce the per share fee based on successively higher percentages of TCV adding liquidity in one day. The lowest fee of $0.0012 per executed share applied to ETP Holders adding 0.52% or more of TCV of liquidity in one day. The Fee Schedule further provided that an ETP Holder providing liquidity through the use of certain ''Zero Display'' order types would pay a fee of $0.0018 per executed share. With respect to the rebate paid to ETP Holders removing liquidity on the Exchange (''Takers'') in securities prices at $1.00 and above, the Fee Schedule prior to the instant amendment provided for a rebate of $0.0015 per executed share.[6]

The Exchange is now proposing to amend its transaction fees and rebates to adopt one fee in the amount of $0.0018 per executed share, applicable to executions by ETP Holders adding liquidity in all securities priced at $1.00 and above traded on the Exchange. The fee of $0.0018 for adding liquidity will apply without regard to percentages of TCV or certain ''dark'' order types, which were considerations that impacted the fees in effect prior to the instant rule change. ETP Holders removing liquidity in securities priced at or above $1.00 will receive a uniform rebate of $0.0017 per executed share which will similarly be paid in all instances and without regard to the considerations that impacted the rebates paid to ETP Holders under the prior fee and rebate structure.

The Exchange submits that the instant proposal furthers its goals of maximizing the effectiveness of its business model, offering economic incentives to ETP Holders to access the Exchange and providing a high-quality and cost-effective execution venue. The Exchange also believes that offering a simplified fee and rebate structure will enhance efficiencies on the part of both the Exchange and ETP Holders and will operate to provide market participants with clarity and transparency into the Exchange's incentives for attracting liquidity to its market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5 defines ''ETP'' as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

[4] The term ''Tapes'' refers to the designation assigned in the Consolidated Tape Association (''CTA'') Plan for reporting trades with respect to securities in Networks A, B and C. Tape A securities are those listed on the New York Stock Exchange, Inc.; Tape B securities are listed on NYSE MKT, formerly NYSE Amex, and regional exchanges. Tape C securities are those listed on the NASDAQ Stock Market LLC.

[5] *See* Exchange Act Release No. 71641 (March 4, 2014); 79 FR 13353 (March 10, 2014) (SR–NSX–2014–05).

[6] The former Fee Schedule specifically included a transaction removing a Zero Display Mid-Point Peg Order and a Zero Display Market Peg Order from the NSX Book as subject to the $0.0015 rebate for removing liquidity.

the provisions of Section 6(b) of the Act,[7] in general and, in particular, Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange not permit unfair discrimination between customers, issuers, brokers, or dealers, and be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange submits that its proposal to meets the requirement under Section 6(b)(4) of the Act that fees assessed by the Exchange be reasonable. Specifically, the Exchange proposes to adopt a uniform fee of $0.0018 per executed share applicable to ETP Holders proving liquidity on the Exchange in securities priced at $1.00 and above. The Exchange believes that the fee is reasonable. In fact, a fee of $0.0018 per executed share was contained in the pre-amendment tiered fee structure, applicable to executions constituting added liquidity of less than 0.08% of the ETP Holder's TCV in one day. The Exchange believes that, while the prior Fee Schedule provided for lower per share fees as the ETP Holder's added liquidity increased as a percentage of TCV, it is reasonable for the Exchange to adopt a single tier-based fee amount within that structure and apply it to all executions adding liquidity. The Exchange states that it seeks to encourage more activity by liquidity providers, which in turn will result in more ETP Holders accessing the Exchange to remove liquidity. As noted by the Exchange, the fee will apply in a non-discriminatory manner to all ETP Holders that enter an order on the Exchange in any security priced at or above $1.00.

The Exchange further submits that adopting a single uniform rebate of $0.0017 per executed share for ETP Holders removing liquidity is a reasonable rebate and satisfies the requirements of Section 6(b)(4) of the Act. Specifically, the proposed rebate amount is an attempt by the Exchange to attract greater order flow by incentivizing ETP Holders to access the NSX market. Combined with the proposed restructuring of the fees that will be charged liquidity providers, the Exchange aspires to increase liquidity and improve price discovery. The Exchange notes that the proposed structure promotes clarity and transparency into the fees and rebates to which ETP Holders will be subject, thereby operating to increase marketplace efficiency and informed decision-making about a choice of execution venues.

The Exchange further submits that its proposal meets the requirements of Section 6(b)(5) of the Act. By seeking to attract more liquidity to the NSX market through the proposed amendment, the Exchange is seeking to improve execution quality, price discovery and cost-effectiveness. The Exchange believes that this amendment will, therefore, further the purposes of Section 6(b)(5) in that it does not permit unfair competition between customers, issuers, brokers or dealers and is designed to promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 Exchange Act. The Exchange believes, in fact, that the proposed change will operate to enhance rather than burden competition by continuing to position the Exchange as a cost-effective trading venue. By adopting a single fee of $0.0018 per executed share for adding liquidity and a single rebate of $0.0017 for removing liquidity, the Exchange seeks to provide a simplified fee and rebate structure that is transparent to ETP Holders and market participants. These are factors that operate to enhance rather than burden competition.

The Exchange submits that adopting a more streamlined fee and rebate structure for securities priced at or above $1.00 will promote greater competition in the equity securities markets and incentivize increased liquidity and improved execution quality on the Exchange through an equitable allocation of reasonable economic incentives.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change from ETP Holders or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2014–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2014–11. 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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78(f)(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR. 240.19b–4.

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–NSX–2014–11, and should be submitted on or before May 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09397 Filed 4–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71982; File No. SR–NYSEARCA–2014–39])

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 1.1, 7.31, 7.34, 7.35, 7.37 and 7.43 To Update Rules Related to the Exchange's Order Types and Modifiers

April 21, 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 April 8, 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 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 NYSE Arca Equities Rules 1.1, 7.31, 7.34, 7.35, 7.37 and 7.43 in order to update rules related to the Exchange's order types and modifiers. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rules 7.31, 7.34 and 7.35[4] to delete the Timed Modifier and related references. Second, the Exchange proposes to eliminate references in Rules 1.1, 7.31, 7.34, 7.37, and 7.43 to the Directed Order and Directed Fill order types, which were recently deleted.

Elimination of Timed Modifier and References to Timed Order Rule 7.31(c)(2)(C)—Timed Modifier

The Exchange proposes to delete Rule 7.31(c)(2)(C), which describes the operation of the Timed Modifier. Because of the lack of use, the Exchange proposes to eliminate the use of the Timed Modifier and therefore proposes to delete this functionality from its rules. The Exchange believes that deleting little-used functionality would streamline its order processing and reduce confusion of available functionality.

The Exchange also proposes to delete references to Timed Order in Rules 7.34 and 7.35. The Exchange recently relocated the Timed Order from former Rule 7.31(q) to its current location in Rule 7.31(c)(2)(C) and changed the description of the functionality to ''Modifier'' from ''Order''.[5] Given the elimination of Rule 7.31(c)(2)(C), the following references to Timed Order should be deleted:

- Rule 7.34(d)(1)(F), describing orders permitted during the Opening Session;
- Rule 7.34(d)(2)(C), providing that Timed Orders designated as good from 1:00 p.m. (Pacific Time) are not eligible to participate in the Closing Auction;
- Rule 7.35(a)(2), providing that Limited Price Orders designated for the Opening Session and entered as a Timed Order good from 1:00 a.m. (Pacific Time) are not eligible for execution during the Opening Auction and Market Order Auction, respectively;
- Rule 7.35(b)(1), providing that Limited Price Orders designated for the Opening Session and entered as a Timed Order good from 1:00 a.m. (Pacific Time) are not eligible for execution during the Opening Auction); and
- Rule 7.35(b)(4), providing that a Limited Price Orders designated for the Opening Session and entered as a Timed Order good from 6:30 a.m. (Pacific Time) are not eligible for execution during the Market Order Auction.

The Exchange will announce by Trader Update the date when the Timed Modifier will no longer be available.

Elimination of References to Directed Order and Directed Fill Order Types

The Directed Order and Directed Fill order types were recently eliminated.[6] The Exchange proposes to remove the remaining references to these order types in the following Rules.

Rule 1.1(a) and Rule 1.1(bbb)—Definitions

The Exchange proposes to eliminate references to the Directed Order Process in Rule 1.1(a), which defines the NYSE Arca Book, and Rule 1.1(bbb), which defines a ''Designated Market Maker'' as a registered Market Maker that participates in the Directed Order Process.

Rule 7.34(d)(1)(C) and Rule 7.34(d)(2)(A)—Trading Sessions

The Exchange proposes to eliminate references to Directed Orders in Rule 7.34 to clarify that these order types are no longer available during the Opening and Core Trading Sessions on the Exchange. Specifically, the Exchange proposes to amend Rule 7.34(d)(1)(C) to remove references to ''market Directed Orders'', which are no longer included in the Market Order Auction for purposes of the Opening Session. Similarly, the Exchange proposes to amend Rule 7.34(d)(2)(A) to remove the

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] All references to rules in this filing are to the rules of NYSE Arca Equities.

[5] *See* Securities Act Release No. 71331 (January 16, 2014), 79 FR 3907 (January 23, 2014) (SR–NYSEArca–2013–92).

[6] *See id.*

reference to Directed Order and clarify that such orders are no longer eligible for entry and execution on the Exchange during the Core Trading Session.

Rule 7.37(a)—Trading Sessions

The Exchange proposes to eliminate the Directed Order Process in Rule 7.37(a), currently Step 1 in the process of matching and executing like-priced orders, bids and offers under the Rule. With the elimination of the Directed Order process, the Exchange proposes to reduce the number of steps from 5 to 4 beginning with the Display Order Process (formerly Step 2) as new Step 1 and continuing with the Working Order Process (formerly Step 3) as new Step 2, the Tracking Order Process (formerly Step 4) as new Step 3, and Routing Away (formerly Step 5) as the new Step 4. The proposed revision to Rule 7.37(a) will also eliminate references to the Directed Fill order type, which is no longer available to Users on Exchange systems.

Rule 7.43—Use of Directed Order Process

The Exchange proposes to eliminate Rule 7.43, which prohibits the use of the Directed Order Process for the purpose of bypassing otherwise applicable fees. The Exchange is proposing eliminating references to the Directed Order Process since Directed Orders are order types not available to Users on Exchange systems.

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 prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that removing cross-references to the Directed Order and Directed Fill order types, which the Exchange recently eliminated in a separate rule filing,[9] would remove impediments to and perfect the mechanism of a free and open market because it would reduce potential confusion that may result from having such cross references in the Exchange's rulebook. Removing such obsolete cross references will also further the goal of transparency and add clarity to the Exchange's rules. The Exchange also believes that removing the Timed Modifier time-in-force condition removes impediments to and perfects a national market system by eliminating little-used functionality from its rulebook. The Exchange believes that removing the Timed Modifier would not be inconsistent with the public interest and the protection of investors because investors will not be harmed by the removal of little-utilized functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would remove obsolete cross-references and remove little-used functionality, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

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 [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2014–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2014–39. 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 Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 5.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[13] 15 U.S.C. 78s(b)(2)(B).

site at *www.nyse.com.* 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–2014–39 and should be submitted on or before May 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09396 Filed 4–24–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71981; File No. SR–FINRA–2014–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amending the Security Futures Risk Disclosure Statement

April 21, 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 April 8, 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 substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the security futures risk disclosure statement (''Statement'').

Below is the text of the proposed supplement to the Statement reflecting amendments to the current Section 5.2 (Settlement by Physical Delivery). The text of the proposed supplement is new.

* * * * *

April 2014 Supplement to the Security Futures Risk Disclosure Statement

The October 2002 Security Futures Risk Disclosure Statement is amended as provided below.

The first paragraph under Section 5.2 (Settlement by Physical Delivery) is replaced with the following paragraph:

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation (NSCC), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the ''invoice price'') to NSCC. In general, if NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of the exchange and NSCC's Rules and Procedures within the normal clearance and settlement cycle for securities transactions, which currently is three business days. However, settlement may be effected on a shorter timeframe based on the rules of the exchange and subject to NSCC's Rules and Procedures.

* * * * *

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

In 2002, FINRA developed sales practice rules governing security futures.[4] Among those rules' requirements is the obligation of a member to deliver the current Statement to each customer at or prior to the time such customer's account is approved for trading security futures.[5] Thereafter, the member must distribute each new or revised Statement to each customer having an account approved for such trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction.[6] FINRA guidance provides that firms may separately distribute new supplements to such customers; firms are not required to redistribute the entire Statement or earlier supplements.[7]

The original Statement was approved by the SEC in 2002,[8] and the first supplement to the Statement was added in 2010.[9] FINRA is proposing a second supplement to the Statement (''proposed supplement'') to accommodate proposed changes by OneChicago, LLC, to list a product with a physical delivery settlement cycle shorter than three business days. The proposed supplement discloses that settlement by physical delivery may be effected on a timeframe shorter than three business days based on the rules of the exchange and subject to NSCC's Rules and Procedures. As with the previous supplement to the Statement, the proposed supplement is intended to be read in conjunction with the Statement.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission notice of the filing of the rule change for immediate effectiveness. The implementation date will be no later than 90 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002) (Order Approving File No. SR–NASD–2002–040).

[5] FINRA Rule 2370(b)(11).

[6] *Id.*

[7] *See* FINRA *Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement).

[8] *See* Securities Exchange Act Release No. 46612 (October 7, 2002), 67 FR 64151 (October 17, 2002) (Notice of Filing and Summary Effectiveness of File No. SR–NASD–2002–128).

[9] The amendment added a supplement to the Statement to accommodate changes by OneChicago, LLC, to list a class of security futures for which adjustments are made for ordinary dividends. *See* Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2010–045).

[10] 15 U.S.C. 78*o*–3(b)(6).

acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed supplement, by updating the security futures risk disclosure statement, will help to accurately inform customers of the characteristics and risks of security futures. The proposed supplement discloses that settlement by physical delivery may be effected on a timeframe shorter than three business days based on the rules of the exchange and subject to NSCC's Rules and Procedures.

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. While FINRA recognizes that there may be a burden associated with the distribution of the proposed supplement to the Statement, FINRA believes that any such burden would be outweighed by the benefit to customers of accurately disclosing the characteristics and risks of security futures. FINRA also believes that any burden will be minimal because firms would only be required to distribute the proposed supplement and would not be required to redistribute the Statement and initial supplement if they have already provided those documents to customers. In addition, firms may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the proposed supplement, provided firms adhere to the standards contained in the Commission's May 1996 and October 1995 releases on electronic delivery,[11] and as discussed in *Notice to Members* 98–3.[12] Firms also may transmit the proposed supplement to customers through the use of a hyperlink, provided that customers have consented to electronic delivery.[13] Moreover, FINRA Rule 2370(b)(11) provides flexibility on when each revised Statement (*e.g.,* a new supplement) must be delivered after a customer's account is approved for trading security futures. Instead of having to automatically and immediately distribute a new supplement to every customer having an account approved for trading security futures, a firm may distribute a new supplement no later than the time a confirmation of a transaction is delivered to each customer who enters into a security futures transaction. Accordingly, firms would not be required to distribute the proposed supplement to customers who have accounts approved for trading security futures but do not engage in any new security futures transactions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–019. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–019 and should be submitted on or before May 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09395 Filed 4–24–14; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995), 60 FR 53458 (October 13, 1995).

[12] *See Notice to Members* 98–3 (January 1998).

[13] *See* FINRA *Information Notice,* September 7, 2010 (August 2010 Supplement to the Security Futures Risk Disclosure Statement).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), FINRA provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71978; File No. SR–NASDAQ–2014–039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing PHLX Proprietary Products

April 21, 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 April 10, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to amend certain rules in order to permit the trading of options overlying NASDAQ OMX PHLX LLC (''Phlx'') proprietary indexes and Phlx U.S. Dollar-Settled Foreign Currencies on The NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. The Exchange is proposing to amend the following NOM Rules: Chapter I, Section 1 (Definitions), Chapter III, Section 7 (Position Limits), Section 9 (Exercise Limits), Chapter IV, Section 3 (Criteria for Underlying Securities), Section 6 (Series of Options Contracts Open for Trading), Section 9 (U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value), Chapter VI, Section 4 (Meaning of Premium Quotes and Orders), Chapter VIII, Section 3 (Delivery and Payment), Chapter XIV, Section 5 (Position Limits for Broad-Based Index Options), Section 7 (Position Limits for Industry and Micro-Narrow Based Index Options) and Section 11 (Terms of Index Options Contracts).

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.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 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 purpose of the proposed rule change is to amend NOM's Rules to include provisions to permit the trading of options overlying Phlx proprietary indexes on NOM[3] and Phlx U.S. Dollar-Settled Foreign Currencies.[4] Today, Phlx has various rules which pertain to the listing of options overlying Phlx proprietary indexes and U.S. Dollar-Settled Foreign Currencies. The Exchange proposes to list these Phlx proprietary products on the Exchange in the same manner and with the same terms as these options are traded on Phlx.

Phlx Proprietary Indexes

Position Limits

The Exchange is proposing to amend various NOM Rules to permit the listing of Phlx proprietary indexes. The Exchange is proposing to amend Chapter XIV, which pertains to indexes, specifically at Section 5 regarding position limits. The Exchange is proposing to add the phrase ''or any PHLX proprietary product'' to Section 5(a)(2) to provide that Options Participants must comply with Phlx position limit rules relating to broad-based index options when transacting options overlying Phlx proprietary products. The Exchange is proposing a similar amendment to Section 7 relating to micro-narrow based indexes. Options Participants would be required to comply with Phlx position limits relating to micro-narrow index options when transacting options overlying Phlx proprietary products. Exemptions from position limits would continue to be available to Options Participants pursuant to Chapter XIV, Section 8 pertaining to exemptions from position limits to replicate relevant Phlx rules which grant its members certain exemptions.

Definition

The Exchange is also proposing to amend Chapter I, Section 1 which contains definitions to include the definition of closing index value. Specifically, the Exchange is adding the following definition for closing index value: ''the [t]erm 'closing index value' in respect of a particular index means the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise (P.M.-settled), unless the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.-settled).'' This definition is the same definition that appears in Phlx Rules.[5]

Listing of Long-Term Index Options

Finally, the Exchange proposes to amend Chapter XIV, Section 11 to amend the Terms of Index Options Contracts to amend the text related to Long Term Index Options Series. Today, NOM may list long-term index options series that expire from twelve to sixty months from the date of issuance. The Exchange proposes to amend this timeframe to mirror the timeframe for Phlx index options which is nine to sixty months at Chapter XIV, Section 11(b)(1).[6] In addition, the Exchange proposes to amend Chapter XIV, Section 11(b)(1)(i) to state that ''Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than *nine (9)* months.'' Today, the timeframe is twelve months. The Exchange is conforming this text to the amendment in Section 11(b)(1).

Phlx U.S. Dollar-Settled Foreign Currencies

Position Limits

The Exchange is proposing to amend various NOM Rules to permit the listing of Phlx proprietary U.S. Dollar-Settled Foreign Currencies. The Exchange is proposing to amend Chapter III, which pertain to indexes, specifically at

[3] Today, Phlx lists the following proprietary indexes on its market: SIG Oil Exploration & Production Index™ (EPX℠); PHLX Semiconductor Sector℠ (SOX℠); PHLX Housing Sector™ (HGX℠); PHLX Oil Service Sector℠ (OSX℠); Phlx Utility Sector℠ (UTY℠); and PHLX Gold/Silver Sector℠ (XAU℠).

[4] Today, Phlx lists the following proprietary U.S. Dollar-Settled Foreign Currencies: XDA (Australian Dollar); XDB (British Pound); XDC (Canadian Dollar); XDE (Euro); XDN (Japanese Yen); XDS (Swiss Franc); and XDZ (New Zealand Dollar).

[5] *See* Phlx Rule 1000A(a)(8).

[6] *See* Phlx Rule 1101A.

Section 7 regarding position limits. The Exchange is proposing to amend the rule to provide that no Options Participant shall make, for any account in which it has an interest or for the account of any Customer, an opening transaction on any exchange if the Options Participant has reason to believe that as a result of such transaction the Options Participant or its Customer would, acting alone or in concert with others, directly or indirectly exceed the applicable position limit fixed from time to time by Phlx with respect to U.S. Dollar-Settled Foreign Currency Options.'' [7] The Exchange is proposing a similar amendment to Section 9 related to Exercise Limits.[8] These amendments would permit the Exchange to list these U.S. Dollar-Settled Foreign Currencies with the same position and exercise limits as exist on Phlx today.

Listing Criteria

The Exchange is proposing to amend Chapter IV, Section 3(n) to list the criteria for underlying securities for U.S. Dollar-Settled Foreign Currency Options. This criteria is the same as the criteria for listing proprietary currencies on Phlx.[9] Specifically, the Exchange proposes to add the following criteria: the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, the U.S. dollar, the Mexican peso, the Euro, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona may be approved as underlying foreign currencies for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors. In the event that any of the sovereign governments or the European Economic Community's European Monetary System issuing any of the above-mentioned currencies should issue a new currency intended to replace one of the above-mentioned currencies as the standard unit of the official medium of exchange of such government, such new currency also may be approved as an underlying foreign currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate in the interests of maintaining a fair and orderly market or for the protection of investors. Options trading in such new currency may occur simultaneously with options trading in any of the above-mentioned currencies; provided, however, that the Exchange shall withdraw its approval of options transactions in the currency which is intended to be replaced by such new currency as expeditiously as it deems consistent with the maintenance of a fair and orderly market or the protection of investors. The Exchange may determine to withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event that the Exchange effects such a withdrawal, the Exchange shall not open for trading any additional series of options of the class covering that underlying foreign currency.

The Exchange proposes to amend the Supplementary Material to Chapter IV, Section 6 by adding new Supplementary Material .09 with listing qualifications for U.S. Dollar-Settled Foreign Currency options which are identical to those listing criteria on Phlx.[10] Specifically, within each class of approved U.S. Dollar-Settled Foreign Currency options, the Exchange may open for trading series of options expiring in consecutive calendar months (''consecutive month series'') and series of options expiring at three-month intervals (''cycle month series''), as provided in Supplementary Material at .09. Prior to the opening of trading in any series of U.S. Dollar-Settled Foreign Currency Options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

The Supplementary Material to proposed Chapter IV, Section 6(A) [sic] states, with respect to each class of U.S. Dollar-Settled Foreign Currency options, series of options having up to four consecutive expiration months may be opened for trading simultaneously, with the shortest-term series initially having no more than two months to expiration. Additional consecutive month series of the same class may be opened for trading on the Exchange at or about the time a prior consecutive month series expires, and the expiration month of each such new series shall normally be the month immediately succeeding the expiration month of the then outstanding consecutive month series of the same class of options having the longest remaining time to expiration.

Supplementary Material to proposed Chapter IV, Section 6(B) [sic] states, the Exchange may designate one expiration cycle for each class of U.S. Dollar-Settled Foreign Currency option. An expiration cycle shall consist of four calendar months (''cycle months'') occurring at three-month intervals. With respect to any particular class of U.S. Dollar-Settled Foreign Currency option, series of options expiring in the four cycle months designated by the Exchange for that class may be opened for trading simultaneously, with the shortest-term series initially having approximately three months to expiration. Additional cycle month series of the same class may be opened for trading on the Exchange at or about the time a prior cycle month series expires, and the expiration month of each such new series shall normally be approximately three months after the expiration month of the then outstanding cycle month series of the same class of options having the longest remaining time to expiration.

The Supplementary Material to proposed Chapter IV, Section 6(C) [sic] states, the Exchange may list, with respect to any U.S. Dollar-Settled Foreign Currency, options having up to three years from the time they are listed until expiration. There may be up to ten options series, options having up to thirty-six months from the time they are listed until expiration. There may be up to six additional expiration months. Strike price interval, bid/ask differential and continuity Rules shall not apply to such options series until the time to expiration is less than nine months. For each expiration month opened for trading of U.S. Dollar-Settled Foreign Currency options, in addition to the strike prices listed by the Exchange pursuant to Supplementary Material .09 to proposed Chapter IV, Section 6, the Exchange shall also list a single strike price of $0.01. Additional series of options of the same class may be opened for trading on the Exchange as the market price of the underlying foreign currency moves substantially from the initial exercise price or prices. The opening of a new series of options on the Exchange shall not affect any other series of options of the same class previously opened.

The Exchange may initially list exercise strike prices for each expiration of U.S. Dollar-Settled Foreign Currency options on currencies within a 40 percent band around the current Exchange Spot Price at fifty cent ($.50) intervals. Thus, if the Exchange Spot Price of the Euro were at $100.00, the Exchange would list strikes in $.50 intervals up to $120.00 and down to $80.00, for a total of eighty-one strike prices available for trading. As the

[7] *See* proposed Rule at Chapter III, Section 7(a)(iv).

[8] *See* proposed Rule at Chapter III, Section 9(a)(iv).

[9] *See* Phlx Rules 1009(c) and 1010 at Commentary .06.

[10] *See* Rule 1012(a)(iii) and Commentary .06 and .07 to Rule 1012. *See also* Rule 1000(b)(16).

Exchange Spot Price for U.S. Dollar-Settled Foreign Currency options moves, the Exchange may list new strike prices that, at the time of listing, do not exceed the Exchange Spot Price by more than 20 percent and are not less than the Exchange Spot Price by more than 20 percent. For example, if at the time of initial listing, the Exchange Spot Price of the Euro is at $100.00, the strike prices the Exchange will list will be $80.00 to $120.00. If the Exchange Spot Price then moves to $105.00, the Exchange may list additional strikes at the following prices: $105.50 to $126.00. The exercise price of each series of U.S. Dollar-Settled Foreign Currency options opened for trading on the Exchange normally shall be fixed at a price per unit which is reasonably close to the current Exchange Spot Price per unit of the underlying foreign currency in the foreign exchange market at or before the time such series of options is first opened for trading on the Exchange, as determined by finding the arithmetic mean of Exchange Spot Prices.

The Exchange defines the term ''Exchange Spot Price'' similar to the Phlx Rule 1000(b)(16), ''in respect of an option contract on a foreign currency means the cash market spot price, for the sale of one foreign currency for another, quoted by various foreign exchange participants for the sale of a single unit of such foreign currency for immediate delivery that is calculated from the foreign currency price quotation reported by the foreign currency price quotation dissemination system selected by the Exchange, to which an appropriate multiplier is applied. The multiplier(s) will be: 100 for the British pound, the Euro, the Swiss franc, the Canadian dollar, the Australian dollar, the Brazilian real, and the New Zealand dollar; 1,000 for the Chinese yuan, the Danish krone, the Mexican peso, the Norwegian krone, the South African rand, and the Swedish krona; 10,000 for the Japanese yen and the Russian ruble; and 100,000 for the South Korean won.''

Closing Settlement Value

The Exchange proposes to add a new Chapter IV, Section 9 to address Closing Settlement Value. The Exchange is proposing to add language similar to that contained in a Phlx Rule.[11] Specifically, the Exchange is adding language which states, U.S. Dollar-Settled Foreign Currency options are settled in U.S. dollars. The closing settlement value for the U.S. Dollar-Settled Foreign Currency options on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona shall be the Exchange Spot Price at 12:00:00 Eastern Time (noon) on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day prior to the expiration date unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. Neither the Exchange, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current settlement value or the closing settlement value resulting from an act, condition, or cause beyond the reasonable control of the Exchange including but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission, or delay in the reports of transactions in one or more underlying currencies or any error, omission or delay in the reports of the current settlement value or the closing settlement value by the Exchange. The Exchange shall post the closing settlement value on its Web site or disseminate it through one or more major market data vendors.

Minimum Increments

The Exchange also proposes to amend Chapter VI, Section 4 to add a new section (c) and (d) to add rule text similar to that of Phlx[12] to address minimum increments for quoting and bids and offers. Specifically, all options on foreign currencies where the underlying foreign currency is not the U.S. dollar shall have a minimum increment of $.01. In the case of options on foreign currencies, all bids or offers shall be expressed in terms of U.S. dollars per unit of the underlying foreign currency. E.g., a bid of ''3.25'' for a premium on a $170 strike price option on the British pound shall represent a bid to pay $325 per option contract.

Delivery and Payment

The Exchange proposes to amend Chapter VIII, Section 3 to add a new section (d) to address delivery and payment similar to a Phlx Rule.[13] Specifically, in accordance with the applicable rules of The Options Clearing Corporation (''OCC''), upon exercise of an in-the-money U.S. Dollar-Settled Foreign Currency option structured as a call, the holder receives, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the U.S. Dollar-Settled Foreign Currency options contract multiplied by the number of units of currency covered by the contract. For a U.S. Dollar-Settled Foreign Currency option structured as a put, the holder receives U.S. dollars representing the excess of the exercise price over the closing settlement value of the U.S. Dollar-Settled Foreign Currency option contract multiplied by the number of units of foreign currency covered by the contract.

Definition

The Exchange also proposes to add a new definition to Chapter I, Section 1 for foreign currency. This definition is the same definition that appears in Phlx Rules.[14] The Exchange proposes to define foreign currency to mean means the standard unit of the official medium of exchange of a sovereign government including the United States Government (e.g., the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, the Swedish krona, or the United States dollar) or the Euro.

Surveillance and Capacity

The Exchange represents that it has the necessary systems capacity to support listing these proprietary Phlx products on the Exchange. The Exchange represents that it has an adequate surveillance program in place. The Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, which was modernized in 2008, and may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. ISG members include all of the U.S. registered stock and options markets and work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition,

[11] *See* Phlx Rule 1057.

[12] *See* Phlx Rules 1033(b)(ii) and 1034(a)(ii).

[13] *See* Phlx Rule 1044. NASDAQ Rules at Chapter VIII, Section 3 contain a Delivery and Payment rule which would be supplemented with the above-described rule text.

[14] *See* Phlx Rule 1000(b)(13).

the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

Incorporation of Phlx Rules

NOM proposes herein to incorporate by reference as NOM Options Rules certain Phlx such that NOM members will comply with a NOM rule by complying with the Phlx rule referenced. In connection with its proposal to incorporate Phlx rules by reference, NOM will file a request, pursuant to Rule 240.0–12,[15] an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those NOM Options Rules that are effected solely by virtue of a change to a cross-referenced Phlx rule. NOM agrees to provide written notice to Options Participants of any amendments to Phlx rules that are incorporated by reference.[16] NOM will notify Participants whenever Phlx proposes to change a rule that has been incorporated by reference into the NOM Options Rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposal would allow Phlx proprietary indexes and U.S. Dollar-Settled Foreign Currency options to be traded on NOM, in addition to Phlx. Investors would have an additional venue in which to trade these proprietary products. The Exchange seeks to list and trade these proprietary products utilizing the same terms and conditions as Phlx. The proposed rules mirror the terms and conditions of Phlx proprietary products as they are listed and traded on Phlx. The Exchange believes that this will serve to minimize investor confusion as the products would be traded in the same manner with the same position limits, increments and listing conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange intends to list and trade options on Phlx proprietary products on NOM in the same manner that these products are traded on Phlx.

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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 to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2014–039 and should be submitted on or before May 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09393 Filed 4–24–14; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 240.0–12.

[16] NOM will provide such notice through a posting on the same Web site location where NOM posts its own rule filings pursuant to Rule 19b–4(1) under Act, within the timeframe required by that Rule. The Web site posting will include a link to the location on the Phlx Web site where those SROs' proposed rule changes are posted.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(a)(ii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13940 and #13941]

Mississippi Disaster #MS–00071

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 04/21/2014.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/07/2014 through 04/10/2014.

Effective Date: 04/21/2014.

Physical Loan Application Deadline Date: 06/20/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/21/2015.

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: Covington.

Contiguous Counties: Mississippi: Forrest, Jefferson Davis, Jones, Lamar, Simpson, Smith.

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 13940 B and for economic injury is 13941 0.

The States which received an EIDL Declaration # are Mississippi.

Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 21, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–09462 Filed 4–24–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13948 and #13949]

Montana Disaster #MT–00086

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 Montana (FEMA—4172—DR), dated 04/17/2014.

Incident: Ice jams and flooding.

Incident Period: 03/01/2014 through 03/16/2014.

Effective Date: 04/17/2014.

Physical Loan Application Deadline Date: 06/16/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/20/2015.

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 04/17/2014, 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: Broadwater, Dawson, Golden Valley, Jefferson, Lake, Musselshell, Park, Pondera, Prairie, Ravalli, Richland, Rosebud, Sanders, Stillwater, Wheatland.

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 139486 and for economic injury is 139496

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–09464 Filed 4–24–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13936 and #13937]

Mississippi Disaster #MS–00070

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 04/14/2014.

Incident: Severe Weather and Flooding.

Incident Period: 03/28/2014 through 03/29/2014.

DATES: *Effective Date:* 04/14/2014.

Physical Loan Application Deadline Date: 06/13/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/14/2015.

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: Wilkinson.

Contiguous counties:

Mississippi: Adams, Amite, Franklin.

Louisiana: Concordia, East Feliciana, West Feliciana.

The Interest Rates are:

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 13936 6 and for economic injury is 13937 0.

The States which received an EIDL Declaration # are Mississippi, Louisiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 14, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–09387 Filed 4–24–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13938 and #13939]

Tennessee Disaster #TN–00079

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 Tennessee (FEMA—4171—DR), dated 04/11/2014.

Incident: Severe Winter Storm

Incident Period: 03/02/2014 through 03/04/2014

Effective Date: 04/11/2014

Physical Loan Application Deadline Date: 06/10/2014

Economic Injury (EIDL) Loan Application Deadline Date: 01/12/2015

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 04/07/2014, 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:

Carroll, Cheatham, Dickson, Haywood, Houston, Madison, Shelby, Tipton.

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 Oranizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13938B and for economic injury is 13939B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–09386 Filed 4–24–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8708]

In the Matter of the Review of the Designation of Continuity Irish Republican Army and Other Aliases

As a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, as amended.

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2009 determination to maintain the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: April 17, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–09477 Filed 4–24–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 8707]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:00 a.m. on Wednesday, May 28, 2014, in Room 05L18–01 of the United States Coast Guard Headquarters Building, 2703 Martin Luther King Jr. Ave SE., Washington, DC 20593. The primary purpose of the meeting is to prepare for the sixty-fourth Session of the International Maritime Organization (IMO) Technical Co-operation Committee (TCC 64) to be held at the IMO Headquarters, United Kingdom from June 11 to June 13, 2014 and the one hundred and twelfth Session of the IMO Council Session (C 112) to be held at the IMO Headquarters, United Kingdom, from June 16 to June 21, 2014.

The agenda items to be discussed include:

Sixty-Fourth Sesson of the Technical Co-Operation Committee

—Adoption of the agenda
—Work of other bodies and organizations
—Integrated Technical Co-operation Programme
—Financing of the Integrated Technical Co-operation Programme
—Linkage between the Integrated Technical Co-operation Programme and the Millennium Development Goals
—Partnerships for progress
—Voluntary IMO Member State Audit Scheme
—Integration of women in the maritime sector
—Global maritime training institutions
—Application of the Committee's Guidelines

—Work Programme
—Any other business
—Election of the Chairman and the Vice-Chairman for 2015
—Consideration of the report of the Committee on its sixty-fourth session

One Hundred and Twelfth Session of Council

—Adoption of the agenda
—Report of the Secretary-General on credentials
—Strategy, planning and reform
—Resource Management
  —Human resource matters, including amendments to the Staff Regulations and Staff Rules
  —Accounts and audit: final accounts for the finance period 2013 and transfers within the 2013 budget
  —Report on investments
  —Report on arrears of contributions and of advances to the Working Capital Fund and on the implementation of Article 61 of the IMO Convention
  —Budget considerations for 2014
—Voluntary IMO Member State Audit Scheme
—Consideration of the report of the Marine Environment Protection Committee
—Consideration of the report of the Legal Committee
—Consideration of the report of the Maritime Safety Committee
—Consideration of the report of the Technical Co-operation Committee
—Technical Cooperation Fund: Report on activities of the 2013–2014 programmes
—World Maritime University:
  —Report of the Board of Governors
  —Budget
—IMO International Maritime Law Institute:
  —Report of the Board of Governors
  —Budget
—Protection of vital shipping lanes
—Periodic review of administrative requirements in mandatory IMO instruments
—External relations:
  —Relations with the United Nations and the specialized agencies
  —Joint Inspection Unit
  —Relations with intergovernmental organizations
  —Relations with non-governmental organizations
  —World Maritime Day
  —International Maritime Prize
  —IMO Award for Exceptional Bravery at Sea
—Report on the status of the Convention and membership of the Organization
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
—Place, date and duration of the next session of the Council
—Supplementary agenda items, if any

Members of the public may attend this meeting up to the seating capacity of the room. To have access to the building, or to request reasonable accommodation, those who plan to attend should contact the meeting coordinator; LCDR Matthew Frazee by email at *matthew.p.frazee@uscg.mil* or by phone at (202) 372–1376 not later than May 21, 2014. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo*.

Dated: April 18, 2014.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2014–09453 Filed 4–24–14; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as amended by Public Law 104–13; Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Request for Extension of Currently Approved Information Collection.

SUMMARY: The information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this renewal of an existing information collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation should be directed to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer, or to OMB Office of Information & Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority, Washington, DC 20503, no later than *(30 days from date of publication).*

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: EnergyRight® Program.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 33,000.

Estimated Total Annual Burden Hours: 10,020.

Estimated Average Burden Hours per Response: .33.

Need For and Use of Information: This information is used by distributors of TVA power to assist in identifying and financing energy improvements for their electrical energy customers.

Michael T. Tallent,

Director, Enterprise Information Security & Policy.

[FR Doc. 2014–09178 Filed 4–24–14; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Notice of Funding Availability for the Northeast Region SBTRC.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for; (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges or; (5) chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Northeast Region (Connecticut, Maine,

Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont).

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC–2014–16.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to small and disadvantaged businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $224,000.

Award Floor: $210,000.

Program Authority: DOT is authorized under 49 U.S.C. 332 (b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via email on or before May 16, 2014, 6:00pm Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before May 30, 2014. The base year period of performance will commence June 1, 2014, and end on May 31, 2015 (additional two option years possible).

ADDRESSES: Applications must be electronically submitted to OSDBU via email at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Mr. Mark Antoniewicz, Small Business Specialist, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue, SE., W56–462, Washington, DC 20590. Telephone: (202) 366–1930. Email: *mark.antoniewicz@dot.gov.*

SUPPLEMENTARY INFORMATION:

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1. Introduction

1.1 Background

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e. The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may

develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award a Cooperative Agreement to one organization in the Northeast Region, from herein referred to as ''region'', in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service the states throughout the Northeast Region (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont) the entire region, not just the SBTRC's state or local geographical area.

The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

SBTRC Region Competed in This Solicitation

Northeast Region: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

Northeast Region
Ceiling: $224,000 per year
Floor: $210,000 per year

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a quarterly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must

be supportive by the narrative and must relate to the numerical data on the quarterly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

(E) Outreach Services/Conference Participation

1. Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region

8. Participate in monthly teleconference call with the Regional Assistance Division Manager and OSDBU staff.

(F) Short Term Lending Program (STLP)

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of seven (7) completed STLP applications per year.

(G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of 2 complete BEP seminars. The BEP consists of the following components: (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity.

Furnish all labor, facilities and equipment to perform the services described in this announcement.

(H) Women and Girls in Transportation Initiative (WITI)

Pursuant to Executive Order 13506, and 49 U.S.C. 332 (b) (4) & (7), the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, retain women and girls from a variety of disciplines in the

transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation entities in their region. The WITI program shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per state for consideration by OSDBU.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to OSDBU at *SBTRC@dot.gov.*

The applicant is advised to turn on request delivery receipt notification for email submission. Proposals must be received by DOT/OSDBU no later than March 14, 2014 6:00pm Eastern Standard Time (EST).

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points).
- Linkages (25 points).
- Organizational Capability (25 points).
- Staff Capabilities and Experience (15 points).
- Cost Proposal (10 points).

(A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization

has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small businesses in the transportation industry, but to also successfully manage and maintain their internal financial, payment, and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non–responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which may include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

Appendix A

Format for Proposals For the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. Table of Contents

Identify all parts, sections and attachments of the application.

2. Application Summary

Provide a *summary overview* of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.
- The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. Approach and Strategy

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

5. Linkages

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. Organizational Capability

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.

• Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. Staff Capability and Experience

• List proposed key personnel, their salaries and proposed fringe benefit factors.

• Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.

• Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. Cost Proposal

• Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.

• Provide a brief narrative linking the cost proposal to the proposed strategy.

9. Proof of Tax Exempt Status

10. Assurances Signature Form

Complete the attached Standard Form 424B ASSURANCES–NON–CONSTRUCTION PROGRAMS identified as Attachment 1.

11. Certification Signature Forms

Complete form DOTF2307–1 DRUG–FREE WORKPLACE ACT CERTIFICATION FOR a GRANTEE OTHER THAN AN INDIVIDUAL identified as attachment 2 and Form DOTF2308–1 CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS identified as Attachment 3.

Signed Conflict of Interest Statements

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

12. Standard Form 424

Complete Standard Form 424 Application for Federal Assistance identified as Attachment 4.

PLEASE BE SURE THAT ALL FORMS HAVE BEEN SIGNED BY AN AUTHORIZED OFFICIAL WHO CAN LEGALLY REPRESENT THE ORGANIZATION.

Issued in Washington, DC, on April 14, 2014.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2014–09439 Filed 4–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Office of Small and Disadvantaged Business Utilization (OSDBU), Office of the Secretary of Transportation (OST), Department of Transportation (DOT) .

ACTION: Notice of Funding Availability for the West Central Region SBTRC.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for: (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges or; (5) chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the West Central Region (Colorado, North Dakota, South Dakota, Nebraska, Wyoming and Utah).

OSDBU will enter into Cooperative Agreements with these organizations to provide outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, business assessment, management training, counseling, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the federal, state and local levels. Throughout this notice, the term ''small business'' will refer to: 8(a), small disadvantaged businesses (SDB), disadvantaged business enterprises (DBE), women owned small businesses (WOSB), HubZone, service disabled veteran owned businesses (SDVOB), and veteran owned small businesses (VOSB). Throughout this notice, ''transportation-related'' is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC–2014–16.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to small and disadvantaged businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $145,000.

Award Floor: $125,000.

Program Authority: DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via email on or before June 6, 2014, 6:00 p.m. Eastern Standard Time (EST). Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to request delivery receipt notification for email submissions. DOT plans to give notice of award for the competed region on or before June 27, 2014.

ADDRESSES: Applications must be electronically submitted to OSDBU via email at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Mr. Mark Antoniewicz, Small Business Specialist, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue SE., W56–462, Washington, DC 20590. Telephone: (202) 366–1930. Email: *mark.antoniewicz@dot.gov.*

SUPPLEMENTARY INFORMATION:

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Full Text of Announcement

1. Introduction

1.1 Background

The DOT established OSDBU in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts and subcontracts.

The Regional Assistance Division of OSDBU, through the SBTRC program, allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to, establish working relationships with the state and local transportation agencies and technical assistance agencies (i.e. The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must provide outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as Short Term Lending Program (STLP) Information, Bonding Education Program (BEP) information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, Women and Girls in Transportation Initiative (WITI) information, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this Request For Proposal (RFP) is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award a Cooperative Agreement to one organization in the West Central Region, from herein referred to as ''region'', in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service the states throughout the West Central Region (Colorado, North Dakota, South Dakota, Nebraska, Wyoming and Utah) the entire region, not just the SBTRC's state or local geographical area.

The region's SBTRC headquarters must be established in one of the designated states set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated state.

SBTRC Region Competed in This Solicitation:

West Central Region: Colorado, North Dakota, South Dakota, Nebraska, Wyoming and Utah.

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate that the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organization must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

West Central Region Ceiling: $145,000 per year
Floor: $125,000 per year

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and US DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 20% of salary plus fringe benefits, up to 100% of a Project Coordinator salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, the Project Coordinator, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

The cooperative agreement will be awarded for a period of 12 months (one

year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4), (5) &(7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts. In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters state in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small businesses to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other federal, state and local government agencies, such as the U.S. Small Business Administration (SBA), state and local highway agencies, state and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Analyst on a quarterly basis, accompanied by a narrative report on the activities and performance results for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the quarterly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as State, Regional, and Local Transportation Government Agencies, SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and federal, state, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters state must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the federal, state, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

(E) Outreach Services/Conference Participation

1. Utilize the services of the System for Award Management (SAM) and other sources to construct a database of regional small businesses that currently or may in the future participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps (a web-based system for posting solicitations and other Federal procurement-related documents on the Internet), and other sources to eligible small businesses and inform the small business community about those opportunities.

3. Develop a ''targeted'' database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, i.e., access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the state and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, state and local conferences where a significant number

of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Analyst for review and posting on the OSDBU Web site on a monthly basis. Clearly identify the events designated for SBTRC participation and include recommendations for OSDBU participation.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon request by OSDBU, coordinate efforts with DOT's grantees and recipients at the state and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region

8. Participate in monthly teleconference call with the Regional Assistance Division Manager and OSDBU staff.

(F) Short Term Lending Program (STLP)

1. Work with STLP participating banks and if not available, other lending institutions to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of seven (7) completed STLP applications per year.

(G) Bonding Education Program (BEP)

Work with OSDBU, bonding industry partners, local small business transportation stakeholders, and local bond producers/agents in your region to deliver a minimum of 2 complete BEP seminars. The BEP consists of the following components: (1) The stakeholder's meeting; (2) the educational workshops component; (3) the bond readiness component; and (4) follow-on assistance to BEP participants via technical and procurement assistance based on the prescriptive plan determined by the BEP. For each BEP event, work with the local bond producers/agents in your region and the disadvantaged business participants to deliver minimum of 10 disadvantaged business participants in the BEP event with either access to bonding or an increase in bonding capacity.

Furnish all labor, facilities and equipment to perform the services described in this announcement.

(H) Women and Girls in Transportation Initiative (WITI)

Pursuant to Executive Order 13506, and 49 U.S.C. 332(b)(4) & (7), the SBTRC shall administer the WITI in their geographical region. The SBTRC shall implement the DOT WITI program as defined by the DOT WITI Policy. The WITI program is designed to identify, educate, attract, retain women and girls from a variety of disciplines in the transportation industry. The SBTRC shall also be responsible for outreach activities in the implementation of this program and advertising the WITI program to all colleges and universities and transportation entities in their region. The WITI program shall be developed in conjunction with the skill needs of the USDOT, state and local transportation agencies and appropriate private sector transportation-related participants including, S/WOBs/DBEs, and women organizations involved in transportation. Emphasis shall be placed on establishing partnerships with transportation-related businesses. The SBTRC will be required to host 1 WITI event and attend at least 5 events where WITI is presented and marketed.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with federal, state, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per state for consideration by OSDBU.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposal packages must be submitted electronically to OSDBU at *SBTRC@dot.gov.*

The applicant is advised to turn on request delivery receipt notification for email submission. Proposals must be received by DOT/OSDBU no later than March 14, 2014 6:00pm Eastern Standard Time (EST).

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points)
- Linkages (25 points)
- Organizational Capability (25 points)
- Staff Capabilities and Experience (15 points)
- Cost Proposal (10 points)

(A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully provide outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. It will be the responsibility of the successful candidate to not only provide the services outlined herein to small businesses in the transportation industry, but to also successfully manage and maintain their internal financial, payment, and invoicing process with their financial management offices. OSDBU will place an emphasis on capabilities of the applicant's financial management staff. Additionally a site visit will be required prior to award for those candidates that are being strongly considered. A member of the OSDBU team will contact those candidates to schedule the site visits prior to the award of the agreement.

(D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU cannot exceed the ceiling outlined in Section 1.3: Description of Competition of this RFP per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non-responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective awardee in the region, which may include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation project, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

Appendix A

Format for Proposals for the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. Table of Contents

Identify all parts, sections and attachments of the application.

2. Application Summary

Provide a *summary overview* of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.
- The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. Approach and Strategy

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

5. Linkages

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. Organizational Capability

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.
- Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. Staff Capability and Experience

- List proposed key personnel, their salaries and proposed fringe benefit factors.
- Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.
- Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. Cost Proposal

- Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.
- Provide a brief narrative linking the cost proposal to the proposed strategy.

9. Proof of Tax Exempt Status

10. Assurances Signature Form

Complete the attached Standard Form 424B ASSURANCES-NON-CONSTRUCTION PROGRAMS identified as Attachment 1.

11. Certification Signature Forms

Complete form DOTF2307–1 DRUG-FREE WORKPLACE ACT CERTIFICATION FOR A GRANTEE OTHER THAN AN INDIVIDUAL identified as attachment 2 and Form DOTF2308–1 CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS identified as attachment 3.

Signed Conflict of Interest Statements

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or state transportation agencies that may have the appearance of a conflict of interest.

12. Standard Form 424

Complete Standard Form 424 Application for Federal Assistance identified as Attachment 4.

PLEASE BE SURE THAT ALL FORMS HAVE BEEN SIGNED BY AN AUTHORIZED OFFICIAL WHO CAN LEGALLY REPRESENT THE ORGANIZATION.

Issued in Washington, DC, on April 10, 2014.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2014–09440 Filed 4–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the WIS 23 Corridor Expansion Project, in Fond du Lac and Sheboygan Counties, Wisconsin. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). Claims seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 22, 2014. If this date falls on a Saturday, Sunday, or legal holiday, parties are advised to file their claim no later than the business day preceding this date. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Bethaney Bacher-Gresock, FHWA, 525 Junction Road Suite 8000, Madison, Wisconsin 53717; telephone: (608) 662–2119; email: *Bethaney.Bacher-Gresock@dot.gov.* The FHWA Wisconsin Division's normal office hours are 7 a.m. to 4 p.m. central time. For the Wisconsin Department of

Transportation (WisDOT): Name, Wisconsin Department of Transportation, Northeast Region, 944 Vanderperren Way, Green Bay, Wisconsin 54304; telephone: (920) 920–492–5698; email: *Jill.Michaelson@dot.wi.gov*. The WisDOT Northeast Region's normal office hours are 7:45 a.m. to 4:30 p.m. central time.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project: WIS 23 Corridor Expansion Project in Fond du Lac and Sheboygan Counties, Wisconsin. The purpose of the project is to provide additional highway capacity to serve existing and projected traffic volumes and improve operational efficiency and safety for local and through traffic while avoiding or minimizing environmental effects. The project will widen the existing WIS 23 two-lane roadway and construct a four-lane divided highway with a median approximately 19.1 miles from US 151 to County UU. Project specific actions include acquiring right-of-way, constructing two diamond interchanges and one jug-handle interchange, constructing a roundabout, constructing new travel lanes and frontage roads, modifying local roads, improving two local trails and extending another, installing new bridges and culverts, removing and placing fill, removing vegetation, providing stormwater management measures, and implementing mitigation measures.

The actions by FHWA on this project, and the laws under which such actions were taken, are described in the combined Record of Decision (ROD) and Limited Scope Supplemental Final Environmental Impacts Statement (LS SFEIS) approved on March 17, 2014, and in other documents in the FHWA administrative record. The decisions approved in the combined ROD and LS SFEIS are consistent with the September 27, 2010 ROD. The combined ROD and LS SFEIS supersedes the 2010 ROD where it addresses issues identified as part of the Limited Scope Supplemental EIS pursuant to 23 CFR 771.130. The combined ROD and LS SFEIS was prepared pursuant to Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, § 1319, 126 Stat. 405 (2012).

The combined ROD and LS SFEIS, and other documents in the Administrative Record are available by contacting FHWA or WisDOT at the addresses provided above. The combined ROD and LS SFEIS can be viewed and downloaded from the project Web site at *http://www.dot.wisconsin.gov/projects/neregion/23/index.htm* or viewed at the Fond du Lac or Plymouth public libraries.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109, 23 U.S.C. 128, and U.S.C. 139].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].
6. *Social and Economic:* Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 *et seq.* as amended by the Uniform Relocation Act Amendments of 1987 [Pub. L. 100–17].
7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1376].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, § 1308, 126 Stat. 405(2012).

Issued on: April 14, 2014.

R. Kirk Fredrichs,

Assistant Division Administrator, FHWA Wisconsin Division, Madison, Wisconsin.

[FR Doc. 2014–09254 Filed 4–24–14; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0109]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant requests from four individuals for exemptions from the regulatory requirement that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The regulation and the associated advisory criteria published in the Code of Federal Regulations as the ''Instructions for Performing and Recording Physical Examinations'' have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. The Agency concluded that granting exemptions for these CMV drivers will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions. FMCSA grants exemptions that will allow these four individuals to operate CMVs in interstate commerce for a 2-year period. The exemptions preempt State laws and regulations and may be renewed.

DATES: The exemptions are effective April 25, 2014. The exemptions expire on April 25, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Division Chief, Physical Qualifications, Office of Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

A. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or

other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (73 FR 3316, January 17, 2008). This statement is also available at *http://Docketinfo.dot.gov.*

B. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the safety regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period.

FMCSA grants four individuals an exemption from the regulatory requirement in § 391.41(b)(8), to allow these individuals who take anti-seizure medication to operate CMVs in interstate commerce for a 2-year period. The Agency's decision on these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s), the length of time elapsed since the individual's last seizure, and each individual's treatment regimen. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) [1] for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in Motor Carrier Management Information System (MCMIS).[2] For non-CDL holders, the Agency reviewed the driving records from the State licensing agency. The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers covered by the exemptions granted here have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

In reaching the decision to grant these exemption requests, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency previously gathered evidence for potential changes to the regulation at 49 CFR 391.41(b)(8) by conducting a comprehensive review of scientific literature that was compiled into the ''*Evidence Report on Seizure Disorders and Commercial Vehicle Driving*'' (*Evidence Report*) [CD–ROM HD TL230.3 .E95 2007]. The Agency then convened a panel of medical experts in the field of neurology (the MEP) on May 14–15, 2007, to review 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure, and the 2007 *Evidence Report.* The *Evidence Report* and the MEP recommendations are published on-line at *http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm,* under Seizure Disorders, and are in the docket for this notice.

MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.[3] The MEP recommendations are included in previously published dockets.

Epilepsy diagnosis. If there is an *epilepsy diagnosis,* the applicant should be seizure-free for *8 years, on or off medication.* If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years.* Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with an epilepsy diagnosis should be performed every year.

Single unprovoked seizure. If there is a *single unprovoked seizure* (i.e., there is no known trigger for the seizure), the individual should be seizure-free for *4 years, on or off medication.* If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years.* Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

Single provoked seizure. If there is a *single provoked seizure* (i.e., there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

- *Examples of low-risk factors for recurrence* include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; and by alcohol or illicit drug withdrawal.
- *Examples of moderate-to-high-risk factors for recurrence* include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes, or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates individuals with moderate to high-risk conditions should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the *Evidence Report* to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 ''Seizure Disorders and Commercial Driver Safety'' evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that ''drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5 year period or more'' [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes relevant current medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 ''Conference on Neurological Disorders and Commercial Drivers'' (NITS Accession No. PB89–158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB's recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances.

[1] *Commercial Driver License Information System* (CDLIS) is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of fifty-one licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

[2] *Motor Carrier Management Information System* (MCMIS) is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

[3] Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., ''Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety,'' FMCSA, October 15, 2007.

In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver's actual seizure history and time since the last seizure. The Agency has decided to use the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis.

C. Exemptions

Following individualized assessments of the exemption applications, including a review of detailed follow-up information requested from each applicant, FMCSA is granting exemptions from 49 CFR 391.41(b)(8) to four individuals. Under current FMCSA regulations, all of the four drivers receiving exemptions from 49 CFR 391.41(b)(8) would have been considered physically qualified to drive a CMV in interstate commerce except that they presently take or have recently stopped taking anti-seizure medication. For these four drivers, the primary obstacle to medical qualification was the FMCSA Advisory Criteria for Medical Examiners, based on the 1988 ''Conference on Neurological Disorders and Commercial Drivers,'' stating that a driver should be off anti-seizure medication in order to drive in interstate commerce. In fact, the Advisory Criteria have little if anything to do with the actual risk of a seizure and more to do with assumptions about individuals who are taking anti-seizure medication.

In addition to evaluating the medical status of each applicant, FMCSA evaluated the crash and violation data for the four drivers, some of whom currently drive a CMV in intrastate commerce. The CDLIS and MCMIS were searched for crash and violation data on the four applicants. For non-CDL holders, the Agency reviewed the driving records from the State licensing agency.

These exemptions are contingent on the driver maintaining a stable treatment regimen and remaining seizure-free during the 2-year exemption period. The exempted drivers must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free. The driver must undergo an annual medical examination by a medical examiner, as defined by 49 CFR 390.5, following the FCMSA's regulations for the physical qualifications for CMV drivers.

FMCSA published a notice of receipt of application and requested public comment during a 30-day public comment period in a **Federal Register** notice for each of the applicants. A short summary of the applicants' qualifications and a discussion of the comments received follows this section. For applicants who were denied an exemption, a notice will be published at a later date.

D. Comments

Docket # FMCSA–2013–0109

On November 13, 2013, FMCSA published a notice of receipt of exemption applications and requested public comment on 11individuals (78 FR 68144). The comment period ended on December 13, 2013. No commenters responded to this **Federal Register** notice. FMCSA has determined that four of these applicants should be granted an exemption.

Dean Bretey

Mr. Bretey is a 63 year-old driver in Wisconsin. He has a history of seizures and has remained seizure free for at least 10 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 10 years. If granted the exemption, he would like to drive a CMV. His physician states he is supportive of Mr. Bretey receiving an exemption.

Dwight Crownover

Mr. Crownover is 49 year-old driver in New York. He has a history of seizures and has remained seizure free for 29 years. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a delivery truck. His physician states he is supportive of Mr. Crownover receiving an exemption.

John Johnson

Mr. Johnson is a 35 year-old driver in Wisconsin. He has a history of epilepsy and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same for over 8 years. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Johnson receiving an exemption.

Michael Schneider

Mr. Schneider is a 27 year-old driver in Wisconsin. He has a history seizure and has remained seizure free since 2004. He does not take seizure medication and states that he has never taken seizure medication. If granted the exemption, he would like to drive a heavy equipment truck. His physician states that he is supportive of Mr. Schneider receiving an exemption.

E. Basis for Exemption

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, the Agency's analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting the driver to driving in intrastate commerce.

Conclusion

The Agency is granting exemptions from the epilepsy standard, 49 CFR 391.41(b)(8), to four individuals based on a thorough evaluation of each driver's qualifications, safety experience, and medical condition. Safety analysis of information relating to these four applicants meets the burden of showing that granting the exemptions would achieve a level of safety that is equivalent to or greater than the level that would be achieved without the exemption. In accordance with 49 U.S.C. 31315(b)(1), each exemption will be valid for 2 years, with annual recertification required unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

FMCSA exempts the following four drivers for a period of 2 years with annual medical certification required: Dean Bretey (WI); Dwight Crownover (NY); John Johnson (WI); and Michael Schneider (WI) from the prohibition of CMV operations by persons with a clinical diagnosis of epilepsy or seizures. If the exemption is still in effect at the end of the 2-year period, each of the drivers may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 25, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–09447 Filed 4–24–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Availability of the Final Environmental Impact Report/ Environmental Impact Statement, Section 4(f) Evaluation and Draft General Conformity Determination for the California High-Speed Train System Fresno to Bakersfield Section

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA is providing this notice to advise the public that FRA is issuing a Final Environmental Impact Statement (EIS) and Section 4(f) Evaluation for the California High-Speed Train (HST) System Fresno to Bakersfield Section (Project). FRA is also making a Draft General Conformity Determination for the Project available for public review and comment. FRA is the lead Federal agency and the California High Speed Rail Authority (Authority) is the lead state agency for the environmental review process. The agencies have prepared the Final EIS consistent with federal law and also to serve as an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA) and CEQA Guidelines. The U.S. Army Corps of Engineers (USACE) and Surface Transportation Board (STB) served as Cooperating Agencies for the preparation of this Final EIS.

DATES: The Final EIS and Section 4(f) Evaluation are being made available to the public for a 30-day period according to 40 CFR 1506.10 prior to final FRA action. Written comments on the Draft Conformity Determination and Section 4(f) Evaluation for the California HST Project Fresno to Bakersfield Section may be sent during the 30-day period, to Ms. Stephanie Perez-Arrieta at the contact address below. The 30-day period commences on the date the U.S. Environmental Protection Agency's notice of availability is published in the **Federal Register**.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for addresses where copies of the Final EIS, Section 4(f) Evaluation, and Draft General Conformity Determination are available online at the FRA's Web site: *http://www.fra.dot.gov/Page/P0468* and the Authority's web site: *http://www.hsr.ca.gov/Programs/Environmental_Planning/index.html*. Copies are also available for viewing at the addresses available in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Perez-Arrieta, Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Railroad Administration, U.S., Department of Transportation, 1200 New Jersey Avenue SE., MS–20, Washington, DC 20590 (telephone: 202–493–0388).

SUPPLEMENTARY INFORMATION: Once completed, the California HST system will provide intercity, high-speed passenger rail service on more than 800 miles of tracks throughout California, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. It will use state-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology, including contemporary safety, signaling, and automated train-control systems, with trains capable of operating up to 220 miles per hour (mph) over a fully graded-separated, dedicated double track alignment. The HST System is comprised of multiple sections, one of which is the Fresno to Bakersfield Section analyzed in the Final EIS.

The Final EIS describes the potential environmental impacts, both adverse and beneficial, of the Fresno to Bakersfield Project Section, identifies appropriate measures to mitigate adverse impacts, and identifies the agencies'' preferred alternative. The approximately 114-mile-long Fresno to Bakersfield Section is a critical Phase 1 link connecting to the Merced to Fresno Section and Bay Area HST Sections to the north and the Bakersfield to Palmdale and Palmdale to Los Angeles HST Sections to the south. This project-level EIS tiers off of the Statewide Program EIS published in 2005 and the Bay area to Central Valley Program EIS published in 2008 and builds on the earlier decisions and Program EISs.

In August 2011, FRA issued a Draft EIS and circulated the document for a 60-day public and agency review and comment period. In July 2012, FRA issued a Supplemental Draft EIS for a 90-day public and agency review and comment period. Both the Draft and Supplemental Draft EISs analyzed a No Action Alternative and various Action Alternatives for the construction and operation of the California HST Project Fresno to Bakersfield Section, including alignment alternatives and station locations. FRA and the Authority convened three public hearings for the Draft EIS in Fresno, Hanford, and Bakersfield in September 2011, and three additional public hearings for the Supplemental Draft EIS in Fresno, Hanford, and Bakersfield in August 2012.

Consistent with the provisions of Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 to 1508), FRA's Procedures for Considering Environmental Impacts (Environmental Procedures) (64 FR 28545, May 26, 1999), the Final EIS evaluates the potential environmental effects associated with Action Alternatives and the No Action Alternative, identifies appropriate mitigation measures to minimize the potential environmental impacts, and identifies a preferred alternative. The FRA, Authority, and Cooperating Agencies considered the entire record and the potential for environmental impact in identifying the Preferred Alternative. Additionally, the Final EIS includes FRA's Section 4(f) Evaluation, which provides the supporting analysis to comply with 49 U.S.C. 303 and FRA's Environmental Procedures.

FRA is also issuing a Draft General Conformity Determination for public and agency comment. The Draft General Conformity Determination has been prepared pursuant to 40 CFR part 93, subpart B, which establishes the process for complying with the general conformity requirements of the Clean Air Act. Consistent with those regulations, FRA is making the Draft Conformity Determination available for public review and comment. Analysis of the Project's potential emissions found that construction period emissions would exceed the General Conformity *de minimis* threshold for Nitrogen Dioxide (NO_X) and volatile organic compounds (VOC), a precursor for ozone. However, operation of the Project would result in an overall reduction of regional emissions of all applicable air pollutants and would not cause a localized exeedance of an air quality standard. Conformance of the Project will be accomplished through a Voluntary Emissions Reduction Agreement which will offset the NO_X and VOC emissions consistent with applicable regulatory requirements.

Complete hard copies of the Final EIR/EIS, Section 4(f) Evaluation, and the Draft General Conformity Determination are available for viewing at the following locations:

- California High-Speed Rail Authority, 770 L Street, Suite 800, Sacramento, CA

- Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC
- California High-Speed Rail Authority, 2550 Mariposa Mall, Suite 3015, Fresno, CA
- Fresno Public Library, Central, 2420 Mariposa Avenue, Fresno, CA
- Kings County Library, Corcoran, 1001–A Chittenden Avenue, Corcoran, CA
- Kings County Library, Hanford, 401 N. Douty Street, Hanford, CA
- Tulare Public Library, 475 North M Street Tulare, CA
- Allensworth Community Center, 8123 Avenue 36, Allensworth, CA
- Kern County Library, Beale Memorial, 701 Truxtun Avenue, Bakersfield, CA
- Kern County Library, Shafter, 236 James Street, Shafter, CA
- Kern County Library, Wasco, 1102 7th Street, Wasco, CA

Summary chapters and complete electronic copies are available for viewing at the following locations:

- Allensworth
  - Allensworth Community Services District, 3336 Road 84
- Armona
  - Kings County Library, 11115 C Street
- Bakersfield
  - City of Bakersfield Planning Department, 1715 Chester Avenue
  - —Kern County Library, Baker Branch, 1400 Baker Street
  - —Kern County Library, Northeast Branch, 3725 Columbus Street
  - —Dr. Martin Luther King Jr. Community Center, 1000 South Owens Street
  - —Greenacres Community Center, 2014 Calloway Drive
  - —Community Action Partnership of Kern, 300 19th Street
  - —Richard Prado East Bakersfield Senior Center, 2101 Ridge Road
- Clovis
  - —Fresno County Public Library, Clovis Regional Library, 1155 Fifth Street
- Corcoran
  - —City of Corcoran Planning Department, 832 Whitley Avenue
- Delano
  - —Kern County Library, Delano Branch, 925 10th Avenue
- Fresno
  - —City of Fresno Planning Department, 2220 Tulare Street #6
  - —Fresno County Public Library, Cedar-Clinton, 4150 E. Clinton Street
  - —Fresno County Public Library, Fig Garden, 3071 W. Bullard Avenue
  - —Fresno County Public Library, Mosqueda Center, 4670 E. Butler Avenue
  - —Fresno County Public Library, Sunnyside, 5566 E. Kings Canyon Road
  - —Fresno County Public Library, West Fresno, 188 E. California Avenue
  - —Fresno County Public Library, Woodward Park, 944 E. Perrin Avenue
  - —Fresno County Public Library, Senior Resource Center, 2025 E. Dakota Avenue
  - —Fresno County—Clerk to the Board, 2281 Tulare Street #301
  - —Einstein Neighborhood Center, 3566 E. Dakota Avenue
  - —Fresno Interdenominational Refugee Ministries (F.I.R.M.), 1940 N. Fresno Street
  - —Mary Ella Brown Community Center, 1350 E. Annadale Avenue
  - —Lafayette Neighborhood Center, 1516 E. Princeton Avenue
  - —Mosqueda Community Center, 3670 E. Butler Avenue
  - —Ted C. Wills Community Center, 770 N. San Pablo Avenue
  - —Dickey Development Center, 1515 E. Divisadero Street
  - —Frank H. Ball Community Center, 760 Mayor Avenue
- Hanford
  - —City of Hanford Planning Department, 317 N. Douty Street
  - —Hanford Adult School, 905 Campus Drive
  - —Kings Community Action Organization, 1130 N. 11th Avenue
  - —Housing Authority of Kings County, 670 S. Irwin Street
- Laton
  - —Fresno County Public Library, Laton Branch, 6313 DeWoody Street
  - —Laton Community Services District, 6501 E. Latonia Avenue
- Lemoore
  - —Kings County Library, Lemoore Branch, 457 C Street
- Pinedale
  - —Fresno County Public Library, Pinedale, 7170 N. San Pablo Street
  - —Pinedale Community Center, 7170 N. San Pablo Street
- Sacramento
  - —Sacramento Public Library, 8281 I Street
- Shafter
  - —City of Shafter Planning Department, 336 Pacific Avenue
- Tulare
  - —City of Tulare Planning Department, 411 E. Kern Avenue
- Visalia
  - —City of Visalia Planning Department, 707 W. Acequia Avenue
  - —Tulare County Library, Visalia Branch, 200 West Oak Avenue
- Wasco
  - —City of Wasco Planning Department, 746 8th Street
  - —Wasco Housing Authority, 750 H Street

A full list of other federal agencies, state agencies, and selected interested parties that have received summary chapters with complete electronic copies of the Final EIR/EIS is included in Chapter 9 of the Final EIR/EIS, which can be accessed electronically on FRA's Web site and Authority's Web site provided above.

Issued in Washington, DC, on April 23, 2014.

Corey Hill,

Director, Office of Passenger and Freight Programs.

[FR Doc. 2014–09585 Filed 4–24–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

Under the PRA, Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Community Reinvestment Act Regulations.''

DATES: Comments must be submitted on or before June 24, 2014.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is

subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0160, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing a notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title: Community Reinvestment Act Regulations.

OMB Control Number: 1557–0160.

Description: The Community Reinvestment Act (CRA) requires the Federal banking agencies (Agencies) to assess the record of banks and savings associations in helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities.[1] The CRA statute requires the Agencies to issue regulations to carry out its purposes.[2]

Each Agency must provide written CRA evaluations of the institutions they supervise. The public portion of each written evaluation must present the Agency's conclusions with respect to the CRA performance standards identified in its regulations; include the facts and data supporting those conclusions; and contain the institution's CRA rating and the basis for that rating.

The data collection requirements in the CRA regulations are necessary for the Agencies to examine, assess, and assign a rating to an institution's CRA performance and to prepare the public section of the written CRA performance evaluation.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,693.

Estimated Total Annual Burden: 142,463 hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2014–09478 Filed 4–24–14; 8:45 am]

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[1] 12 U.S.C. 2903.

[2] 12 U.S.C. 2905.

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Residential Clothes Washers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2013–BT–TP–0009]

RIN 1904–AC97

Energy Conservation Program: Test Procedures for Residential 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 for residential clothes washers established under the Energy Policy and Conservation Act. The proposed amendments would codify test procedure guidance that DOE has issued in response to frequently asked questions, clarify additional provisions within the test procedures, provide improved organization of each section, and correct formatting errors in DOE's clothes washer test procedures.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than July 9, 2014. See section V, ''Public Participation,'' for details. DOE will hold a public meeting on this proposed test procedure if one is requested by May 12, 2014.

ADDRESSES: Any comments submitted must identify the NOPR for Test Procedures for Residential Clothes Washers and provide docket number EERE–2013–BT–TP–0009 and/or regulatory information number (RIN) number 1904–AC97. 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: RCWTPAmendments 2013TP0009@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, public meeting attendee lists and transcripts, comments, and other supporting documents/ materials, is available for review at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0009.* 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 or review other public comments and the docket, or to request a 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: *clothes_washers@ee.doe.gov.*
Elizabeth Kohl, Esq., U.S. Department of Energy, Office of 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. Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et seq.; ''EPCA'') 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 (AEMTCA), Public Law 112–210 (Dec. 18, 2012)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' These include residential clothes washers, the subject of today's notice. (42 U.S.C. 6292(a)(7))

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.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, 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 that 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. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and afford the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e))

DOE test procedures for clothes washers are codified at appendices J1 and J2 to 10 CFR part 430 subpart B (hereafter, ''appendix J1'' and ''appendix J2''). DOE most recently amended the test procedures for clothes washers on March 7, 2012 (hereafter, the ''March 2012 final rule''). 77 FR 13888. The March 2012 final rule amended certain provisions in appendix J1 and also established the clothes washer test procedure codified in appendix J2.

Manufacturers of residential clothes washers are required to make representations of energy efficiency using either appendix J1 or appendix J2, as revised by the March 2012 final rule. Manufacturers must use a single test procedure for all representations for a basic model and may not use appendix J1 for certain representations and appendix J2 for other representations. Compliance with DOE's amended standards for residential clothes washers, and the corresponding mandatory use of the test procedure at appendix J2 for all representations, is required as of March 7, 2015. 77 FR 32308 (May 31, 2012) and 77 FR 59719 (October 1, 2012).

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes clarifications and technical amendments to its test procedures for clothes washers at appendix J1 and appendix J2. In addition, DOE proposes amendments to the reporting and verification requirements for residential clothes washers. DOE has determined that today's proposed amendments, as described in section III, would not alter the measured efficiency of clothes washers. The proposed amendments either codify guidance interpreting DOE's existing regulations, provide further clarification of the relevant test procedure provisions, provide improved organization of each section, or correct formatting errors in DOE's clothes washer test procedures.

III. Discussion

A. Clothes Container Capacity Measurement

1. Capacity Measurement in Appendix J1

Section 3.1 of appendix J1 contains procedures for measuring the clothes container capacity. The capacity measurement procedure involves filling the clothes container with water and determining the volume based on the weight of the added water divided by the water density. Section 3.1.4 specifies that the clothes container be filled manually with water to its ''uppermost edge.''

DOE published guidance on July 6, 2010, clarifying the definition of the uppermost edge of the clothes container for the purpose of performing the capacity measurement. See DOE's guidance document at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/clotheswashers_faq1_2010-07-06.pdf.*

The guidance document provides detailed descriptions and illustrations of the boundary defining the uppermost edge of the clothes container for both top-loading and front-loading clothes washers. For top-loading vertical-axis clothes washers, DOE's guidance document defines the uppermost edge of the clothes container as the highest point of the innermost diameter of the tub cover. For front-loading horizontal-axis clothes washers, the guidance document specifies filling the clothes container with water to the highest point of contact between the door and the door gasket. If any portion of the door or the door gasket would occupy the measured volume when the door is closed, that volume must be excluded from the measurement. DOE's guidance document also provides illustrations of the boundary defining the uppermost edge of the clothes container for both top-loading and front-loading clothes washers. The proposed amendments incorporate these clarifications into section 3.1.4 of appendix J1, including the illustrations.

The proposal also further clarifies the appropriate water fill levels for front-loading horizontal-axis clothes washers with concave door shapes and top-loading horizontal-axis clothes washers. For front-loading horizontal-axis clothes washers with concave door shapes, the capacity measurement would include any space above the plane defined by the highest point of contact between the door and the door gasket, if that area can be occupied by clothing during washer operation. Similarly, for top-loading hojjhrizontal-axis clothes washers, the water fill volume would include any space above the plane of the door hinge, if that area can be occupied by clothing during washer operation. This additional clarification is consistent with the illustrations for these clothes washer types provided in DOE's guidance document.

2. Capacity Measurement in Appendix J2

Section 3.1.4 of appendix J2 specifies the maximum allowable water fill levels for determining the capacity of top-loading and front-loading clothes washers. For front-loading horizontal-axis clothes washers, section 3.1.4 specifies filling the clothes container to the ''uppermost edge that is in contact with the door seal.'' DOE intended this language to clarify the text in DOE's July 6, 2010 guidance document interpreting appendix J1, but did not intend for the measured capacity values to differ. Since publishing the March 2012 final rule, DOE has become aware of front-loading clothes washer door geometries with complex curvatures that may not have an easily discernible ''uppermost edge'' in contact with the door seal. Therefore, DOE proposes to amend the description of the maximum fill volume for front-loading clothes washers using the same language as the proposed amendments in appendix J1 and specified in the July 6, 2010 guidance, as described in the previous section. The proposed revision would provide additional clarity by referencing the ''highest point of contact'' rather than the ''uppermost edge,'' and will more

clearly identify the geometric boundary between the door and the door gasket. The proposal would more clearly define the uppermost fill level for a wider range of front-loading clothes washer geometries. As noted above, DOE intends for the measured capacity of a front-loading clothes washer using the proposed revised language to be equivalent to the measured capacity using the current front-loading capacity language in section 3.1.4 of appendix J2.

The proposed amendments to appendix J2 also incorporate illustrations of the boundary defining the uppermost edge of the clothes container for top-loading vertical-axis clothes washers and the boundaries defining the fill volumes for horizontal-axis clothes washers.

3. Capacity Rounding Requirements

In both appendix J1 and appendix J2, the capacity measurement is used to determine the test load sizes as defined in Table 5.1. The table provides test load sizes for capacity ranges in increments of 0.10 cubic feet. The precision of the capacity ranges in Table 5.1 implies that the capacity of the clothes container must be measured to the nearest 0.01 cubic foot for the purpose of determining load size. However, manufacturers typically report capacity to the nearest 0.1 cubic foot in DOE certification reports and in retail advertisements.

The proposed amendments clarify that, under appendix J1 and appendix J2, capacity must be measured to the nearest 0.01 cubic foot not only for the purpose of determining load size, but also for the purpose of calculating the values that manufacturers must report pursuant to 10 CFR 429.20(b). In both appendices, DOE proposes specifying this requirement in a new section 3.1.7 following the calculation of capacity in newly renumbered section 3.1.6.

The proposed amendments would also specify in a new section at 10 CFR 429.20(c) that capacity must be reported to the nearest 0.1 cubic foot (cu. ft.) for the purpose of DOE certification reports for residential clothes washers.

Finally, DOE proposes to clarify in a new section at 10 CFR 429.20(a)(3) that the certified capacity of any clothes washer basic model shall be the mean of the capacities of the units in the sample for the basic model. While DOE believes this is current practice because the existing test procedure and sampling plan require testing at least two units and measuring the drum capacity individually for each, DOE is proposing this amendment for clarity.

4. Plastic Sheet Material

Section 3.1.2 of both appendix J1 and appendix J2 instructs the testing party to line the inside of the clothes container with a 2 mil thickness (0.051mm) plastic sheet in preparation for performing the capacity measurement. DOE is aware that common industry practice is to use a large 2 mil plastic bag, rather than a plastic sheet, for lining the clothes container because the shape of the plastic bag more easily conforms to the geometry of the clothing container. DOE believes the measured capacity of the clothes washer would be the same regardless of whether a plastic sheet or plastic bag is used, provided that the thickness of either the plastic sheet or plastic bag is 2 mil. DOE therefore proposes to amend section 3.1.2 of both appendix J1 and appendix J2 to allow the use of either a 2 mil thickness plastic sheet or plastic bag to line the inside of the clothes container.

5. Shipping Bolts

Typically, front-loading clothes washers are designed with large bolts, inserted through the back of the clothes washer, that secure the wash drum to prevent movement of the drum during shipping. These ''shipping bolts'' must be removed prior to operating the clothes washer. Alternatively, on some front-loading clothes washers, the drum is secured using other forms of bracing hardware that is intended to be removed prior to operating the clothes washer.

Section 3.1.1 of appendix J2 currently specifies that the shipping bolts must remain in place during the capacity measurement procedure to support the wash drum and prevent it from sagging downward as the drum is filled with water. The proposed amendments would add a reference to ''other forms of bracing hardware'' in section 3.1.1 of both appendix J1 and appendix J2.

In addition, DOE has become aware of front-loading clothes washer designs that do not use shipping bolts or other forms of bracing hardware to support the wash drum during shipping. DOE proposes further amending section 3.1.1 of both appendix J1 and J2 to describe how a laboratory should measure the capacity of this type of clothes washer. The proposed amendments would allow a laboratory to support the wash drum by other means, including temporary bracing or support beams. Any temporary bracing or support beams would be required to keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. The proposal would also require that the method used avoid damage to the unit that would affect the results of the energy and water testing. The proposed amendments further specify that the test report must fully document the method used to support the wash drum, and pursuant to 10 CFR 429.71, the manufacturer must retain such documentation as part of its test records.

B. Hot and Cold Water Supply Test Conditions

Section 2.3.1 of both appendix J1 and appendix J2 specifies that the temperature of the hot water supply must not exceed 135 °F and the cold water supply must not exceed 60 °F for clothes washers in which electrical energy or water energy consumption are affected by the inlet water temperature (for example, water heating clothes washers or clothes washers with thermostatically controlled water valves). This specification does not provide a lower bound for the hot and cold water supply temperatures. In contrast, section 2.3.2 of both test procedures specifies a hot water supply temperature of 135 °F ± 5 °F and a cold water supply temperature of 60 °F ± 5 °F for clothes washers in which electrical energy and water energy consumption are not affected by the inlet water temperature.

On clothes washers with thermostatically controlled mixing valves, the supply water temperatures directly affect the relative quantities of hot and cold water consumption during a wash cycle. DOE has observed that the large majority of residential clothes washers on the market now use thermostatically controlled mixing valves or other similar technologies for precisely controlling the wash water temperatures. DOE's engineering analysis during the most recent energy conservation standards rulemaking indicated that precise temperature control will be required to achieve the higher efficiency levels established by the May 31, 2012 direct final rule. (77 FR 32308)

To improve consistency and repeatability of test results, DOE proposes to establish a lower bound of 130 °F for the hot water supply and 55 °F for the cold water supply for clothes washers in which electrical energy or water energy consumption are affected by the inlet water temperature. This would provide an allowable range of five degrees on the hot and cold water supplies (i.e., 130–135 °F and 55–60 °F, respectively). This amendment would apply to both appendix J1 and appendix J2 (with section 2.3.1 in appendix J2 renumbered to 2.2.1).

DOE notes that the proposed five-degree temperature tolerance is a tighter tolerance than is required for clothes washers in which electrical energy and water energy consumption are not affected by the inlet water temperature; however, DOE notes that the water supply temperature affects the outcome of the MEF results when testing clothes washers with thermostatically controlled water valves more significantly than for clothes washers without such valves. DOE requests comment on the potential test burden associated with maintaining a tolerance of five degrees on the hot and cold water supply temperature for clothes washers in which electrical energy and water energy consumption are affected by the inlet water temperature.

C. Test Cloth Standard Extractor RMC Test Procedure

Sections 2.6.5 through 2.6.7 of both appendix J1 and appendix J2 contain the procedures for performing the standard extractor remaining moisture content (RMC) test to evaluate the moisture absorption and retention characteristics and to develop a unique correction curve for each new lot of test cloth. To improve the clarity and overall logical flow of the test procedure, DOE proposes moving the contents of sections 2.6.5 through 2.6.7 in both appendices to a new appendix J3 as a standalone test method for measuring the moisture absorption and retention characteristics of new energy test cloth lots.

D. Test Cloth Loading Instructions

Section 2.8.3 of both appendix J1 and appendix J2 instruct the testing party to load the energy test cloths into the clothes washer by grasping them in the center, shaking them to hang loosely, and then ''put them into the clothes container'' prior to activating the clothes washer. DOE proposes to provide additional specificity for the test cloth handling and loading instructions, which DOE believes will improve the overall clarity and consistency of test cloth loading procedures. The proposed amendments would apply to both appendix J1 and appendix J2 (section 2.8.3 would be renumbered to 2.9.2 in appendix J2 per the proposed amendments).

DOE proposes using a modified version of the loading instructions for towels and pillowcases provided in the Association of Home Appliance Manufacturers (AHAM) HLW–1–2010 test method, *Performance Evaluation Procedures for Household Appliances.*[1] Like DOE's current test cloth loading instructions, the AHAM procedure involves grasping the towel/pillowcase in the center and shaking it so that it hangs loosely. The AHAM procedure further describes placing the towels/pillowcases into the drum with alternating orientations. It also provides sketches illustrating each step in the loading process. DOE's proposed amendments would adopt similar illustrations. The amendments would also specify following any additional manufacturing loading instructions provided to the user regarding the placement of clothing within the clothing container.

E. Energy Test Cycle

1. Warm Rinse Cycles

Section 1.7 of appendix J1 defines the energy test cycle as (A) the cycle recommended by the manufacturer for washing cotton or linen clothes, including all wash/rinse temperature selections and water levels offered in that cycle, and (B) for each other wash/rinse temperature selection or water level available on that basic model, the portion(s) of other cycle(s) with that temperature selection or water level that, when tested pursuant to these test procedures, will contribute to an accurate representation of the energy consumption of the basic model as used by consumers.

DOE published guidance on September 21, 2010, clarifying that the energy test cycle should include the warm rinse of the cycle most comparable to the cottons and linens cycle if warm rinse is not available on the cottons and linens cycle. See DOE's guidance document at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/clotheswasher_faq_2010-09-21.pdf.* The proposed amendments codify DOE's guidance by incorporating this clarification into section 1.7(B) of appendix J1 (redesignated as section 1.8(B) due to the proposed addition of a new entry in the list of definitions before the energy test cycle definition).

As described in section III.E.4 of this NOPR, DOE is proposing a new methodology for determining the energy test cycle in appendix J2. Based on the proposed methodology, which is intended to improve clarity without altering the cycle selections that will be part of the energy test cycle, DOE has tentatively determined that a parallel clarification regarding a warm rinse cycle is unnecessary in appendix J2. The methodology for determining the warm wash/warm rinse temperature selection in appendix J2 requires including the warm rinse cycle if it is not available on the cycle recommended for washing cotton or linen clothes but is available on an alternative cycle selection.

2. Sanitization Cycles

As described in the previous section, the energy test cycle in appendix J1 includes all temperature selections available on the cycle recommended by the manufacturer for washing cotton or linen clothing. The energy test cycle also includes other temperature selections available on other cycles that ''will contribute to an accurate representation of the energy consumption of the basic model as used by consumers.''

Section 3.3 of appendix J1 defines the ''Extra Hot Wash'' as a cycle with a maximum wash temperature of greater than 135 °F on water heating clothes washers. DOE is aware that on some clothes washers, an extra hot temperature selection is available only on a separate sanitization cycle. The proposed amendments to the energy test cycle definition in appendix J1 would clarify that for such clothes washers, the sanitization cycle should be included in the energy test cycle if the cycle is recommended by the manufacturer for washing clothing and if doing so would contribute to an accurate representation of the energy consumption as used by consumers. If the extra hot temperature selection is available only on a sanitization cycle not recommended by the manufacturer for washing clothing (*e.g.,* a cycle intended only for sanitizing the wash drum), such a cycle would not be required for consideration as part of the energy test cycle.

Based on DOE's proposed new methodology for determining the energy test cycle in appendix J2, DOE has tentatively determined that a specific clarification regarding a sanitization cycle is unnecessary in appendix J2 because the methodology for determining the extra hot wash temperature selection requires including the extra hot wash temperature setting if such a setting is available on the clothes washer and is recommended by the manufacturer for washing clothing.

3. Default Cycle Settings

Testing a clothes washer according to appendix J1 or appendix J2 requires selecting specific wash/rinse temperatures and wash water fill levels for the wash cycles used to determine energy and water consumption. In addition, specific spin speeds must be

[1] AHAM HLW–1–2010 is available at *http://www.aham.org/ht/d/Store/name/MAJOR/pid/5132.*

selected for the wash cycle(s) used to determine the remaining moisture content. Other than these settings, the test procedure does not instruct the user to change any other optional settings during testing.

The proposed amendments to appendix J1 would modify section 1.7(B) (redesignated as 1.8(B)) to clarify the requirement to use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. Specifically, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water-heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature (other than wash/rinse temperature, water fill level selection, or spin speed on cycle selections used to determine remaining moisture content) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option for washing normally soiled cotton or linen clothes.

The proposed amendments to appendix J2 would add a new section 3.2.7 to address the use of default cycle settings in the same manner as the modification proposed for appendix J1. DOE believes the new section 3.2.7 is the most appropriate location for this amendment in appendix J2 in conjunction with the revised structure of the energy test cycle definition and flowcharts in appendix J2.

4. Energy Test Cycle Definition and Flowcharts

DOE notes that appendix J1 uses the term ''energy test cycle'' in two different ways. In some instances, ''energy test cycle'' refers to the complete set of wash/rinse temperature selections required for testing. In other instances, ''energy test cycle'' refers to the single wash cycle under test. DOE does not propose changing its usage of the term ''energy test cycle'' in appendix J1. In each instance where the term ''energy test cycle'' is used, the specific meaning of the term can be determined through context.

In appendix J2, however, DOE proposes to simplify the definition of the energy test cycle so that it means the complete set of wash/rinse temperature selections required for testing. The individual wash/rinse temperature selections required for testing would be determined using a new methodology as described below. The provisions within parts (D) and (E) of the current energy test cycle definition would be moved to sections 3.2.7 and 3.2.8, respectively, which is a more appropriate location within the test procedure. Additionally, throughout appendix J2, DOE proposes to provide greater consistency in its usage of the term ''energy test cycle,'' such that when used, it refers only to the entire set of wash/rinse temperature selections required for testing. In instances where the test procedure currently uses the term ''energy test cycle'' to refer to an individual wash cycle, DOE proposes to use the generic term ''wash cycle'' or other similar terminology as appropriate for each instance. DOE also proposes to improve overall clarity by providing the full wash/rinse temperature designation (e.g. ''Cold wash/Cold rinse'') throughout the test procedure.

In conjunction with the simplified energy test cycle definition, DOE proposes a new approach to determining the wash/rinse temperature selections required for testing in appendix J2. DOE proposes to translate the current methodology for determining the energy test cycle into a set of flowcharts that testing parties would use to determine each wash/rinse temperature selection to be used for testing. DOE believes that the binary nature of each decision box within the flowcharts would provide increased clarity and ease of use in determining which wash/rinse temperature settings to use for testing. DOE proposes to include these flowcharts within newly renumbered section 2.12 in appendix J2.

Because the proposed flowcharts would incorporate more precise definitions of warm and cold rinse temperatures, DOE also proposes to clarify the definition of ''cold rinse'' in appendix J2 so that it means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel. This would prevent the unintended consequence of a wash/rinse temperature designation being excluded from the energy test cycle if the rinse portion of the cycle included a small amount of hot water (thus raising the rinse temperature slightly higher than the coldest rinse available on the machine), but was indicated on the control panel as being a cold rinse paired with the selected wash temperature.

In addition, DOE proposes adding a new definition in appendix J2 for ''Normal cycle,'' which would be defined as: ''Normal cycle means the cycle selection recommended by the manufacturer as the most common consumer cycle for washing a full load of normally to heavily soiled cotton clothing. For machines where multiple cycle settings meet this description, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.'' ''. DOE first adopted a similar definition of ''Normal cycle'' for clothes washer testing in appendix J, which incorporated the general approach to calculating the energy consumption of automatic clothes washers contained in AHAM's standard HLW–2EC for clothes washers at the time. (42 FR 25329, 25330 (May 17, 1977); 42 FR 49802 (September 28, 1977)) Over time, machine labeling and literature evolved to the point that the term ''normal'' as previously defined no longer captured all of the control settings most consumers would typically choose in operating the machine to wash their laundry. (See, e.g., 75 FR 57556, 57575) Further, the range of cycle options and terminology on the control panels have changed such that many machines no longer refer to a ''Normal'' cycle, instead relying upon other terms. This evolution may have resulted in inaccurate representations of the energy usage of these machines due to differing interpretations regarding the appropriate test cycle. In order to add clarity and ensure consistent selection of the appropriate cycle for energy testing, DOE is proposing to add the ''Normal cycle'' definition in newly designated section 1.25 and to reference the term in the new energy test cycle flowcharts, and DOE will consider manufacturer literature and markings on the machine when determining the normal cycle of any particular unit. DOE specifically seeks comment on this definition and whether it adequately covers the cycle setting most commonly chosen by users of washing machines.

DOE also proposes to remove the definitions for ''warm rinse'' and ''warm wash'' from section 1 of appendix J2 (Definitions and Symbols), since those terms would be defined in the proposed flowcharts instead.

Finally, DOE proposes to move the current section 2.13 of appendix J2, *Energy consumption for the purpose of certifying the cycle selection(s) to be included in Part (B) of the energy test cycle definition,* to newly created section 3.10. Section 3 of appendix J2 (Test Measurements*),* is a more appropriate location in the test procedure for these provisions.

DOE intends for the cycle selections as determined using the new energy test cycle flowcharts to be the same as the cycle selections as determined using the current energy test cycle definition in appendix J2. DOE requests comment on whether discrepancies exist when determining the wash/rinse temperature selections using the proposed flowcharts compared to using the current energy test cycle definition. If discrepancies exist, DOE requests that interested parties provide specific examples of cycle setting configurations that would lead to the discrepancies. DOE also requests comment on whether the methodology presented in the flowcharts could result in an efficiency rating that is unrepresentative of how a particular clothes washer would be used by consumers.

F. Wash Time Setting

DOE proposes moving the wash time setting provisions from section 2.10 of appendix J2 to a subsection of newly revised section 3.2.5. The procedure for setting the wash time must be performed prior to each individual wash cycle during testing; therefore, the most appropriate location for this instruction is within the specific testing procedures provided in section 3.2.

G. Standby and Off Mode Testing

DOE proposes clarifications to the standby and off mode power testing provisions in appendix J2. In addition to minor wording clarifications in sections 3.9 and 3.9.1 of appendix J2, the proposed clarifications are as follows:

1. Testing Sequence

DOE proposes clarifying that combined low-power mode testing in section 3.9 of appendix J2 be performed after completion of an energy test cycle, after removing the test load, and without disconnecting the electrical energy supply to the clothes washer between completion of the energy test cycle and the start of combined low-power mode testing. This clarification would preclude performing combined low-power mode testing directly after connecting the clothes washer to the electrical energy supply. DOE testing suggests that testing a clothes washer's standby or off-mode power consumption directly after connecting the clothes washer to the electrical energy supply may not be representative of the standby or off-mode power consumption after its first use. DOE believes this clarification would ensure that the results of the combined low-power mode testing accurately represent the conditions most likely to be experienced in a residential setting.

2. Default Settings

DOE proposes clarifying that combined low-power mode testing be performed without changing the control panel settings used for the energy test cycle completed prior to combined low-power mode testing. The test procedure requires using the manufacturer default settings for any wash cycle performed within the energy test cycle. The proposed clarification would preclude activating or deactivating any optional control panel displays or other features not activated by default on the clothes washer when it is not being used to perform an active mode wash cycle, during combined low-power mode testing. DOE believes this clarification would ensure that the results of the combined low-power mode testing accurately represent the conditions most likely to be experienced in a residential setting.

3. Multiple Possible Inactive Modes

DOE testing indicates that some residential appliances, including clothes washers, may have multiple modes that meet the definition of inactive mode currently provided in section 1.15 of appendix J2 (redesignated section 1.16). DOE proposes clarifying that inactive mode is the lowest-power standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display. Specifying use of the lowest-power mode would clarify potential ambiguity regarding which inactive mode to use for testing if multiple inactive modes exist on a clothes washer.

H. Fixed Water Fill Control Systems

The load sizes used for testing depend upon the type of water fill control system available on the clothes washer, as defined in section 2.8 of both appendix J1 and appendix J2. For clothes washers with manual water fill control systems, the minimum and maximum load sizes are tested. For clothes washers with adaptive water fill control systems, the minimum, average, and maximum load sizes are tested.

DOE has become aware of clothes washers that have fixed water levels for all load sizes and no water fill selector or water fill control settings available to the user. DOE notes that, as with adaptive water fill control systems, fixed water fill control systems do not require user action to determine the water fill level. Therefore, DOE proposes that a clothes washer with a fixed water fill control system be tested in the same manner as a clothes washer with an adaptive water fill control system; i.e., using the minimum, average, and maximum load sizes.

The proposed amendments would (1) add a definition for ''fixed water fill control system,'' (2) add a definition for ''automatic water fill control system,'' which would include both fixed water fill control systems and adaptive water fill control systems, and (3) amend the definition of ''adaptive water fill control system'' to clarify that it is considered a type of automatic water fill control system. Additionally, where appropriate, instances of ''adaptive water fill control system'' throughout the test procedure would be replaced with ''automatic water fill control system,'' to indicate that such testing provisions apply to both adaptive water fill control systems and fixed water fill control systems. These amendments would apply to both appendix J1 and appendix J2.

I. Deep Rinse and Spray Rinse Definitions

Section 3.2.2 of appendix J2 states that total water consumption during the energy test cycle shall be measured, including hot and cold water consumption, during wash, deep rinse, and spray rinse. As proposed, the revised section 3.2.8 would specify including the entire active washing mode, and excluding any delay start or cycle finished modes, for each wash cycle tested. Active washing mode is defined in section 1.2 as including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing. DOE believes that the proposed revision to 3.2.8 provides better clarity and completeness, compared to the wording in 3.2.2, regarding the portions of the wash cycle to be included and measured for testing. Therefore, DOE proposes to delete section 3.2.2 from appendix J2 and to renumber the subsequent subsections accordingly.

Furthermore, since section 3.2.2 is the only location within the test procedure where the terms ''deep rinse'' and ''spray rinse'' occur, DOE also proposes to remove those two definitions from the section 1 of appendix J2.

J. Uniformly Distributed Warm Wash Temperatures

Section 1.17 of appendix J1 and section 1.32 of appendix J2 provide the definition of uniformly distributed warm wash temperature selections. A clothes washer has uniformly distributed warm wash temperature selections if (A) the warm wash temperatures have a linear relationship with all discrete warm wash selections

when the water temperatures are plotted against equally spaced consecutive warm wash selections between the hottest warm wash and the coldest warm wash, and the mean water temperature of the warmest and the coldest warm selections coincide with the mean of the hot wash and cold wash water temperatures within ±3.8 °F; or (B) on a clothes washer with only one warm wash temperature selection, the warm wash temperature selection has a water temperature that coincides with the mean of the hot wash and cold wash water temperatures within ±3.8 °F. For clothes washers with uniformly distributed warm wash temperature selections, the reported values to be used for the warm wash setting are the arithmetic average of the measurements for the hot and cold wash selections. This is a ''shortcut'' calculation only; no testing is required.

DOE notes that the criteria for determining whether the warm wash temperatures are uniformly distributed are based on water temperature only; total water consumption is not considered. On a clothes washer with electronic control systems, a clothes washer's warm wash cycles could be programmed to use larger quantities of water than the cold wash and hot wash cycles, yet the data to be used to represent the warm wash cycle would be the average of the cold and hot wash cycles, rather than actual data from testing. Since the warm wash temperature selection has the highest temperature use factor at 0.49, DOE proposes that the warm wash temperature selection(s) on such a clothes washer be tested. Therefore, DOE proposes to remove the definition of uniformly distributed warm wash temperature selections from both appendix J1 and appendix J2, and to remove any provisions within the test procedures pertaining to uniformly distributed warm wash temperature selections.

DOE requests comment on any potential increase in test burden as result of its proposal to eliminate the separate testing provisions for clothes washers with uniformly distributed warm wash temperatures. DOE estimates that the resulting total testing time would be no greater than for clothes washers with the same number of warm wash temperature options, but with non-uniformly distributed temperatures, which DOE observes constitutes the majority of the market.

K. Determining Extra Hot Wash Temperature

Section 3.3 of both appendix J1 and appendix J2 defines Extra Hot Wash as having a maximum wash temperature greater than 135 °F. Determining the maximum wash temperature requires measuring the water temperature during the wash cycle to determine the maximum wash temperature achieved. DOE understands that, in practice, measuring the wash water temperature can be difficult due to factors such as the geometry of front-loading tub design; the increasing use of door locks; and, in high-efficiency clothes washers, the lack of a standing pool of wash water from which to measure the temperature.

DOE proposes adding a statement to section 3.3 of both appendix J1 and appendix J2 to provide guidance on one possible method that testing parties could use to determine the maximum wash water temperature. In the proposed method, testing parties would adhere non-reversible temperature indicator labels to the inside of the clothing container to determine the maximum water temperature during an energy test cycle. If a testing party used the temperature indicator label method when testing a front-loading clothes washer, the label would be adhered along the inner circumference of the clothes container drum, midway between the front and the back of the clothes container. For a top-loading clothes washer, the label would be adhered along the inner circumference of the clothes container drum, as close to the bottom of the container as possible.

Manufacturers may be able to use alternate methods for determining the maximum wash temperature during an energy test cycle; however, DOE is unaware of any other direct measurement methods that could be safely used by a third-party laboratory without requiring partial disassembly of the clothes washer or without permanently altering the machine.

L. Gas-Heated and Oil-Heated Hot Water Energy

Section 4.1.4 of both appendix J1 and appendix J2 provides equations for calculating per-cycle hot water energy consumption using gas-heated or oil-heated water. The result of this calculation is not used in any downstream calculations within the test procedure. The calculated result is referenced within 10 CFR 430.23(j)(1)(i)(B) and (ii)(B); however, these values are not included as part of DOE's certification requirements for clothes washers in 10 CFR 429.20 and 429.46, nor are they required for other DOE regulatory purposes. DOE is unaware of any other regulatory programs that require the calculation of per-cycle hot water energy using gas- or oil-heated water for clothes washers. Therefore, DOE proposes to remove section 4.1.4 from both appendix J1 and appendix J2, and to remove the related sections of 10 CFR 430.23(j)(1)(i)(B) and (ii)(B), adjusting the subsequent section numberings accordingly.

M. Out-of-Balance Loads

DOE has observed that some clothes washers may terminate the wash cycle prematurely if an out-of-balance condition is detected. Because the test procedure defines an energy test cycle as including the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to each cycle, the data from a wash cycle that terminates prematurely if an out-of-balance condition is detected, and thus does not include these required elements, should be discarded. The proposed amendments provide this clarification to section 3.2 of appendix J1 and a new section 3.2.9 of appendix J2.

N. Reordering of Section 2, Testing Conditions

DOE proposes to reorder the subsections within section 2 of appendix J2 (Testing Conditions) to improve the clarity and overall flow of the section. After reordering, the general progression of section 2 would be as follows:

- Laboratory infrastructure requirements
- Instrumentation requirements
- Test cloth requirements
- Test load composition and handling
- Clothes washer installation and preconditioning procedures
- Energy test cycle determination

O. Table 3.2 Edits

Table 3.2 in both appendix J1 and appendix J2 defines the sections within the test procedure that govern the tests of particular clothes washers, based on the number of wash/rinse temperature selections available on the model. DOE proposes to clarify one of the headings in Table 3.2 of appendix J1. The proposal would amend the current heading, ''Number of wash temp. selections'' to ''Number of wash temp. selections in the energy test cycle.'' In addition, Table 3.2 in appendix J1 contains a typographical error in the second footnote: the word ''heating'' is misspelled. Today's proposal corrects this error.

DOE proposes simplifying the overall structure of Table 3.2 in appendix J2 (renumbered 3.2.2) by using the clarified wash/rinse temperature nomenclature within the revised energy

test cycle definition and flowcharts. DOE does not intend for any of the required test sections to change as a result of the proposed revisions to the table.

P. Table 4.1.1 Edits

Table 4.1.1 in appendix J2 provides the temperature use factors. DOE proposes improving the clarity of the overall structure of Table 4.1.1 in appendix J2 by reorganizing the columns in the table to more closely match the wash/rinse temperature nomenclature within the revised energy test cycle definition and flowcharts. DOE does not intend for any of the temperature use factors to change as a result of the proposed revisions to the table.

Q. Table 2.8 Edits

In the March 2012 final rule, Table 2.8 in appendix J2 (''Test Load Sizes and Water Fill Settings Required'') contained a formatting error that combined the average and minimum test load sizes into a single row for clothes washers with an adaptive water fill control system. DOE did not intend to amend the test load sizes required for clothes washers with an adaptive water fill control system. Today's proposal amends the layout of Table 2.8 in both appendix J1 and appendix J2 to improve its overall clarity. As described above, DOE has also proposed changing the heading of the relevant column to ''automatic water fill control system'' rather than ''adaptive water fill control system''.

R. Replacing ''Consumer'' With ''User''

Both appendix J1 and appendix J2 refer to the ''consumer'' in various parts of the test procedures. In each instance, the word ''consumer'' refers to the individual using the clothes washer. DOE notes that the word ''consumer'' may be misconstrued as the original purchaser or owner of the clothes washer. In some cases, particularly coin-operated laundries and multi-family housing common laundry rooms, the purchaser or owner of the clothes washer is not the end user of the clothes washer.

The distinction between the owner and the end user may be relevant to the test procedure if certain settings, such as water fill levels, may be customized by the owner of the clothes washer but are not adjustable by the end user. To prevent any possible ambiguity implied by the word ''consumer,'' DOE proposes to replace the word ''consumer'' with ''user'' or ''end user'' throughout the test procedure in all instances where the word ''consumer'' is currently used.

S. Introductory Text

DOE proposes revising the introductory text after the appendix headings in both appendix J1 and appendix J2 to clarify the proper use of appendices J1 and J2 for making representations of energy efficiency, including certifying compliance with DOE energy conservation standards.

DOE test procedures for clothes washers are set forth in appendices J1 and J2 in 10 CFR Part 430 subpart B. This proposal describes amendments to both appendices. Pursuant to 42 U.S.C. 6293(c), manufacturers must make representations of energy efficiency using any amendments DOE adopts in a final test procedure rule beginning 180 days after the effective date of such rule. Therefore, beginning 180 days after the effective date of any final amendments based on today's proposals, manufacturers must make representations of energy efficiency pursuant to appendix J1 or appendix J2 as modified through such amendments.

In addition, as of March 7, 2015, manufacturers of residential clothes washers will no longer be authorized to use appendix J1. Residential clothes washer manufacturers must use appendix J2, as modified though any amendments that DOE may adopt based on today's proposal, to demonstrate compliance with the standards and make any representations of energy efficiency as of March 7, 2015. March 7, 2015 is the compliance date of the amended energy conservation standards that address standby and off mode energy consumption for residential clothes washers. 77 FR 32308 (May 31, 2012) and 77 FR 59719 (October 1, 2012).

T. Test Procedure Provisions in 10 CFR 430.23

DOE proposes revising section 430.23(j)(3) to contain only the provisions for calculating annual water consumption when using either appendix J1 or appendix J2. The proposed amendments would add a new section 430.23(j)(4), which would contain the provisions for determining water factor and integrated water factor.

The proposed amendments would also create a new section 430.23(j)(5) that would contain the following statement: ''Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the application of appendix J1 or appendix J2, as appropriate.'' This statement is currently contained in section 430.23(j)(3). Moving the statement to a dedicated subsection would maintain consistency with DOE's test procedure provisions for other products within 10 CFR Part 430. DOE notes that the measurement or reporting of any additional measures of energy or water consumption would be adopted through the rulemaking process.

Finally, to eliminate any potential ambiguity, the proposed amendments would replace the phrase ''can be determined'' with ''must be determined'' throughout the text of 10 CFR 430.23(j)(3) through (j)(5).

U. Reporting and Verification Requirements

1. Remaining Moisture Content

DOE has observed the potential for significant variation in the RMC measurement at the maximum spin speed setting on some clothes washer models. During testing of front-loading clothes washer models, DOE observed that the maximum target spin speed may not be achieved during the final spin portion of the cycle if the load size is not evenly distributed around the circumference of the wash drum. DOE believes that in such cases, the spin speed may be automatically reduced as a safety precaution and to prevent damage to the clothes washer caused by the asymmetric rotation of the unbalanced load within the wash basket.

Figure III.1 shows an example of RMC test data obtained from one front-loading residential clothes washer model. DOE performed the RMC measurement using the cold wash cycle at the maximum available spin speed setting. The RMC measurement was performed a total of twelve times using three different test cloth lots. The corrected RMC measurement [2] varied between 32.3 percent and 46.2 percent, with an average of 37.0 percent. DOE has observed similar variations of this magnitude on multiple front-loading clothes washer models.

[2] Corrected RMC measurements are obtained using the test cloth correction factors developed for each test cloth lot, as applied in section 2.6.7 of appendix J1 and appendix J2. DOE publishes a list of the test cloth correction factors developed for test cloth Lots 5 through 20 at *http://www2.eere.energy.gov/buildings/appliance_standards/residential/clothes_washer_test_cloth_correction.html.*

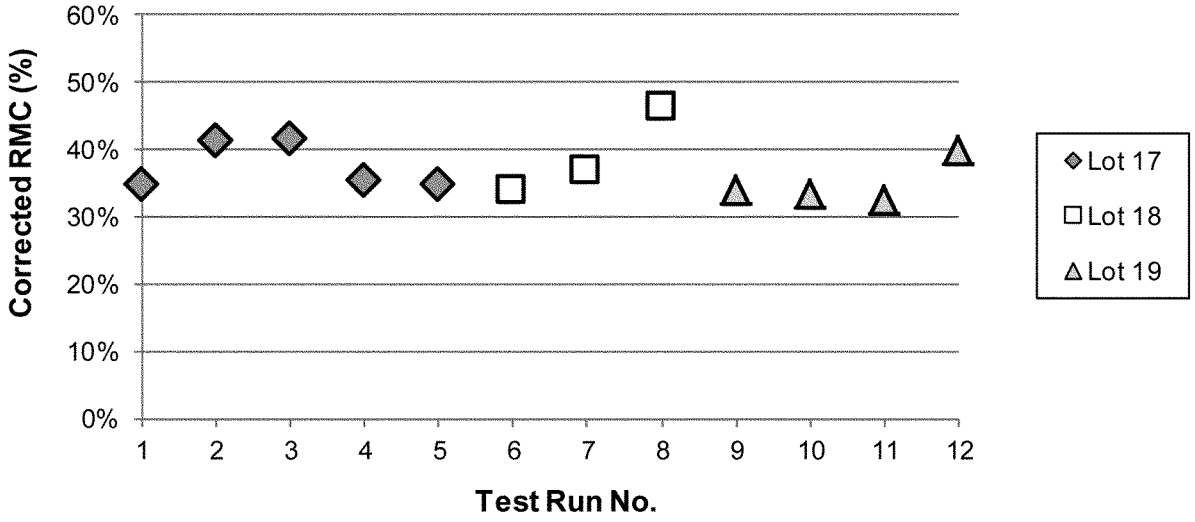


Figure III.1 Remaining Moisture Content Measurements for a Front-Loading Residential Clothes Washer at Maximum Spin Speed

The RMC measurement is used to determine the per-cycle energy consumption for removal of moisture from the test load; i.e., the ''drying energy'' portion of the MEF and Integrated Modified Energy Factor (IMEF) calculations. The drying energy represents between 59 and 87 percent of a clothes washer's total energy consumption; [3] hence, the RMC measurement significantly impacts the overall MEF and IMEF calculations. For example, the level of RMC variation shown in Figure III.1 would lead to a 25 percent variation in the overall MEF calculation.

In today's rule, DOE proposes adding a new section 3.8.5 in both appendix J1 and appendix J2 to specify that manufacturers may perform up to two additional replications of the RMC measurement, for a total of three independent RMC measurements for the tested unit, and use the average of the three measurements as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load.

DOE also proposes to add the RMC measurement to the list of public product-specific information contained in the certification reports for residential clothes washers, as described in 10 CFR 429.20(b)(2)(i) and (ii). DOE also proposes in newly created 10 CFR 429.20(a)(4) that the certified RMC value of any clothes washer basic model shall be the mean of the final RMC value measured for all tested units of the basic model.

Finally, DOE proposes to add provisions in newly created section 10 CFR 429.134(c)(1) specifying that during assessment or enforcement testing, the measured RMC value of a tested unit will be considered the tested unit's final RMC value if the measured RMC value is within two RMC percentage points of the certified RMC value of the basic model (expressed as a percentage), or if the measured RMC value is lower than the certified RMC value. DOE proposes a threshold of two RMC percentage points because such a variation would limit the variation in the overall MEF or IMEF calculation to roughly five percent.

If the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two additional replications of the RMC measurement, each pursuant to the provisions of newly added section 3.8.5 of appendix J1 and appendix J2, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be considered the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

2. Rounding Requirements for All Reported Values

DOE proposes adding a new section at 10 CFR 429.20(c) to specify the rounding requirements of all reported values for residential clothes washers as follows: MEF and IMEF to the nearest 0.01 cu ft/kWh/cycle, WF and IWF to the nearest 0.1 gal/cycle/cu ft, RMC to the nearest 0.1 percentage point, and clothes container capacity to the nearest 0.1 cu ft.

3. Energy Test Cycle Selections

As amended by the March 2012 final rule, 10 CFR 429.20(b)(3) requires certification reports based on testing conducted in accordance with appendix J2 to include a list of all cycle selections comprising the complete energy test cycle for each basic model. DOE believes that this reporting requirement should also pertain when appendix J1 is used, particularly due to the difference in wording of the energy test cycle definition in appendix J1. Therefore, DOE proposes to amend 10 CFR 429.20(b)(3) to require a list of all cycle selections comprising the complete energy test cycle for each basic model, regardless of whether the certification is based on testing conducted in accordance with appendix J1 or appendix J2.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure

[3] Percentages derived from Table 7.2.1 and 7.2.2 in the May 31, 2012 direct final rule technical support document for the residential clothes washer energy conservations standards rulemaking, available at *http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0019-0047.*

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 (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a 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. Today's NOPR would amend DOE's test procedure by codifying guidance interpreting DOE's existing regulations, providing further clarifying interpretation of the relevant test procedure provisions, correcting formatting errors, providing improved overall organization, and removing certain testing provisions within the current test procedures. 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 335224, which applies to household laundry equipment manufacturers and includes residential clothes washer manufacturers, is 1,000 employees. Searches of the SBA Web site [4] to identify clothes washer manufacturers within this NAICS code identified one small business. This small business manufactures laundry appliances, including residential clothes washers.

DOE estimates that the clarified description of the capacity measurement would take the same amount of time to conduct as the capacity measurement analyzed in the March 2012 final rule. DOE believes that use of an alternate bracing method for front-loading clothes washers that do not contain shipping bolts or other bracing hardware is already current practice among manufacturers of such clothes washers. Additionally, DOE notes that the identified small business produces only a single platform of top-loading clothes washers, for which the proposed alternate bracing method would not be applicable.

Regarding the potential increased testing burden associated with maintaining a five degree tolerance on supply water temperatures for clothes washers in which electrical energy consumption or water energy consumption are affected by the inlet water temperature. One method for achieving this temperature tolerance would be to use electronically controlled water mixing valves on both the cold and hot water supply lines. DOE estimates a capital cost of approximately $2,500 for installing electronically controlled water mixing valves on a single test stand. DOE notes that the identified small business currently does not manufacturer this type of clothes washer; therefore, DOE does not expect this proposed amendment to require any changes to the testing hardware currently used by the small business.

DOE does not expect any of the clarifications to the energy test cycle definition or the standby and off mode measurements to affect the total length of testing time. Regarding any potential increase in test burden as a result of its proposal to eliminate the separate testing provisions for clothes washers with uniformly distributed warm wash temperatures. DOE notes that the total testing time would be no greater than for clothes washers with the same number of warm wash temperature options, but with non-uniformly distributed temperatures, which DOE observes constitutes the majority of the market. DOE also notes that the clothes washers manufactured by the identified small business do not contain uniformly distributed warm wash temperatures, and thus the small business will not be affected by the proposed amendment.

Finally, the remaining proposed changes in today's NOPR are intended to clarify the existing test methods without adding any additional requirements and therefore would not result in additional burden.

For the reasons stated above, DOE certifies that the proposed test procedure amendments would not have a significant impact on a substantial number of small entities. DOE will submit a 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 residential 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 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 residential 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 residential clothes washers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review

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

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 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 examined this proposed rule and determined that it 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. 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, this 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 proposal 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 residential 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 new commercial standards in this rulemaking, so these requirements do not apply.

V. Public Participation

A. 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 NOPR.

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. Parties who submit comments 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 that 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).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) The normal cycle definition and whether it adequately covers the cycle setting most commonly chosen by users of washing machines;

(2) The potential test burden associated with maintaining a tolerance of five degrees on the hot and cold water supply temperature ranges for clothes washers in which electrical energy and water energy consumption are affected by the inlet water temperature;

(3) The potential increase in test burden associated with removing the separate testing provisions for clothes washers with uniformly distributed warm wash temperatures.

(4) Whether any discrepancies exist when determining the wash/rinse temperature selections comprising the energy test cycle in appendix J2 using the proposed flowcharts compared to using the current energy test cycle definition (and, if so, specific examples of cycle setting configurations that would lead to the discrepancies); and

(5) Whether the methodology presented in the energy test cycle flowcharts in appendix J2 could result in an efficiency rating unrepresentative of how a particular clothes washer would be used by consumers.

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, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on April 11, 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 430 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 429.20 is amended by:
■ a. Adding paragraphs (a)(3), (a)(4), and (c); and
■ b. Revising paragraphs (b)(2)(i), (b)(2)(ii), and (b)(3).

The revisions and additions read as follows:

§ 429.20 Residential clothes washers.

(a) * * *

(3) The capacity of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the measured clothes container capacity, C, of all tested units of the basic model.

(4) The remaining moisture content (RMC) of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the final RMC value measured for all tested units of the basic model.

(b) * * *

(2) * * *

(i) For residential clothes washers tested in accordance with Appendix J1: The modified energy factor (MEF) in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle), the capacity in cubic feet (cu ft), and the corrected remaining moisture content (RMC) expressed as a percentage. For standard-size residential clothes washers, a water factor (WF) in gallons per cycle per cubic foot (gal/cycle/cu ft).

(ii) For residential clothes washers tested in accordance with Appendix J2: The integrated modified energy factor (IMEF) in cu ft/kWh/cycle, the integrated water factor (IWF) in gal/cycle/cu ft, the capacity in cu ft, the corrected remaining moisture content (RMC) expressed as a percentage, and the type of loading (top-loading or front-loading).

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information: a list of all cycle selections comprising the complete energy test cycle for each basic model.

(c) *Reported values.* Values reported pursuant to this subsection must be rounded as follows: MEF and IMEF to the nearest 0.01 cu ft/kWh/cycle, WF and IWF to the nearest 0.1 gal/cycle/cu ft, RMC to the nearest 0.1 percentage point, and clothes container capacity to the nearest 0.1 cu ft.

■ 3. Section 429.134 is added to read as follows:

§ 429.134 Product-specific enforcement provisions.

(a) *General.* The following provisions apply to assessment and enforcement testing of the relevant products.

(b) Reserved.

(c) *Clothes washers.* (1) *Determination of Remaining Moisture Content.* The procedure for determining remaining moisture content (RMC) will be performed once in its entirety, pursuant to the test requirements of section 3.8 of appendix J1 and appendix J2 to subpart B of part 430, for each unit tested.

(i) The measured RMC value of a tested unit will be considered the tested unit's final RMC value if the measured RMC value is within two RMC percentage points of the certified RMC value of the basic model (expressed as a percentage), or is lower than the certified RMC value.

(ii) If the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two additional replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of appendix J1 and appendix J2 to subpart B of part 430, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

(2) Reserved.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 5. Section 430.23 is amended by:
■ a. Revising paragraphs (j)(1)(i) and (ii);
■ b. Revising paragraph (j)(3); and
■ c. Adding paragraphs (j)(4) through (j)(5).

The revisions and additions read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(j) * * *

(1) * * *

(i) When using appendix J1 (see the note at the beginning of appendix J1),

$(N_1 \times E_{TE1} \times C_{KWH})$

Where,

N_1 = the representative average residential clothes washer use of 392 cycles per year according to appendix J1,

E_{TE1} = the total per-cycle energy consumption when electrically heated water is used, in kilowatt-hours per cycle, determined according to section 4.1.7 of appendix J1, and

C_{KWH} = the representative average unit cost, in dollars per kilowatt-hour, as provided by the Secretary.

(ii) When using appendix J2,

$(N_2 \times (E_{TE2} + E_{TSO}) \times C_{KWH})$

Where,

N_2 = the representative average residential clothes washer use of 295 cycles per year according to appendix J2,

E_{TE2} = the total per-cycle energy consumption when electrically heated water is used, in kilowatt-hours per cycle, determined according to section 4.1.6 of appendix J2,

E_{TSO} = the per-cycle combined low-power mode energy consumption, in kilowatt-hours per cycle, determined according to section 4.4 of appendix J2, and

C_{KWH} = the representative average unit cost, in dollars per kilowatt-hour, as provided by the Secretary.

* * * * *

(3) The annual water consumption of a clothes washer must be determined as:

(i) When using appendix J1, the product of the representative average-use of 392 cycles per year and the total weighted per-cycle water consumption in gallons per cycle determined according to section 4.2.2 of appendix J1.

(ii) When using appendix J2, the product of the representative average-use of 295 cycles per year and the total weighted per-cycle water consumption for all wash cycles, in gallons per cycle, determined according to section 4.2.11 of appendix J2.

(4)(i) The water factor must be determined according to section 4.2.3 of appendix J1 (when using appendix J1) or section 4.2.12 of appendix J2 (when using appendix J2), with the result rounded off to the nearest 0.1 gallons per cycle per cubic foot.

(ii) The integrated water factor must be determined according to section 4.2.13 of appendix J2, with the result rounded off to the nearest 0.1 gallons per cycle per cubic foot.

(5) Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the application of appendix J1 or appendix J2, as appropriate.

* * * * *

Appendix J1—[Amended]

■ 6. Appendix J1 to subpart B of part 430 is amended by:

■ a. Revising the introductory text after the heading, and sections 1.1 and 1.2;

■ b. Removing section 1.17;

■ c. Redesignating sections 1.3 to 1.7, 1.8 to 1.16, and 1.18 to 1.23 as sections 1.4 to 1.8, 1.10 to 1.18, and 1.19 to 1.24, respectively.d. Revising newly redesignated sections 1.8, 1.11, and 1.12;

■ e. Adding sections 1.3, and 1.9;

■ f. Revising sections 2.3.1, 2.6.4.6, 2.6.5, 2.6.5.1, 2.6.5.2, 2.8, Table 2.8, and 2.8.3;

■ g. Removing sections 2.6.4.6.1, 2.6.4.6.2, 2.6.6, and 2.6.7;

■ h. Revising sections 3.1.1, 3.1.2, 3.1.4, and 3.1.5;

■ i. Adding sections 3.1.6 and 3.1.7;

■ j. Revising sections 3.2, 3.2.3, 3.2.3.1, 3.2.3.2, and 3.2.3.2.2;

■ k. Removing section 3.2.1.3;

■ l. Revising Table 3.2, sections 3.3, 3.3.3, 3.4.3, 3.5, 3.5.1, 3.5.2, 3.5.3, and 3.6.3;

■ m. Adding section 3.5.3;

■ n. Adding section 3.8.5; and

■ o. Revising Table 4.1.3 and section 4.1.4.

The revisions and additions read as follows:

Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-automatic Clothes Washers

Note: Any representation related to the energy or water consumption of clothes washers made after [insert date 180 days after date of publication of any test procedure final rule in the **Federal Register**] must be made based upon results generated using this appendix or Appendix J2. Any representation related to the energy or water consumption of clothes washers made between [insert date 30 days after date of publication of any test procedure final rule in the **Federal Register**] and [insert date 180 days after date of publication of any test procedure final rule in the **Federal Register**] must be based upon results generated either under this Appendix J1 or Appendix J2, or upon the test procedures in Appendix J1 or Appendix J2 as they appeared at 10 CFR part 430, subpart B, Appendix J1 or J2, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2013. Manufacturers must use a single appendix for all representations, including certifications of compliance. Compliance with DOE's amended standards for residential clothes washers, and corresponding use of the test procedures at Appendix J2 for all representations by residential clothes washer manufacturers, including certifications of compliance, is required as of March 7, 2015.

* * * * *

1.1. *Adaptive control system* means a clothes washer control system, other than an adaptive water fill control system, that is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring user intervention or actions. The automatic adjustments may, for example, include automatic selection, modification, or control of any of the following: wash water temperature, agitation or tumble cycle time, number of rinse cycles, and spin speed. The characteristics of the clothes load, which could trigger such adjustments, could, for example, consist of or be indicated by the presence of either soil, soap, suds, or any other additive laundering substitute or complementary product.

1.2 *Adaptive water fill control system* means a clothes washer automatic water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

1.3 *Automatic water fill control system* means a clothes washer water fill control system that does not require user intervention or action, and includes adaptive water fill control systems and fixed water fill control systems.

* * * * *

1.8 *Energy test cycle* for a basic model includes:

(A) All wash/rinse temperature selections and water levels offered in the cycle recommended by the manufacturer for washing cotton or linen clothes, and

(B) For each other wash/rinse temperature selection or water level available on that basic model, the portion(s) of other cycle(s) with that temperature selection or water level that, when tested pursuant to these test procedures, will contribute to an accurate representation of the energy consumption of the basic model as used by end users.

If a warm rinse temperature selection is available on the clothes washer but is not available in the cycle recommended for washing cottons or linens, the energy test cycle shall include the warm rinse temperature selection in the cycle most comparable to the cycle recommended for washing cottons or linens.

If an extra hot temperature selection is only available on a sanitization cycle, the sanitization cycle should be included in the energy test cycle if the cycle is recommended by the manufacturer for washing clothing, and if doing so would contribute to an accurate representation of the energy consumption as used by consumers.

For any cycle under (A) or (B) of this section, use the manufacturer default settings, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. This includes wash conditions such as agitation/tumble operation, soil level, spin

speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water-heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Include any optional wash cycle feature for testing (other than wash/rinse temperature, water fill level selection, or spin speed on wash cycles used to determine remaining moisture content) that is activated by default on the wash cycle under test unless the manufacturer instructions recommend not selecting this option for washing normally soiled cotton or linen clothes.

1.9 *Fixed water fill control system* means a clothes washer automatic water fill control system that does not adjust the water fill level based on the size or weight of the clothes load placed in the clothes container.

* * * * *

1.11 *Manual control system* means a clothes washer control system that requires that the user make the choices that determine washer operation or washing conditions, such as, for example, wash/rinse temperature selections, and wash time before starting the cycle.

1.12 *Manual water fill control system* means a clothes washer water fill control system that requires the user to determine or select the water fill level.

* * * * *

2.3.1 *Clothes washers in which electrical energy consumption or water energy consumption are affected by the inlet water temperature (including water heating clothes washers or clothes washers with thermostatically controlled water valves).* The temperature of the hot water supply at the water inlets shall be maintained between 130 °F (54.4 °C) and 135 °F (57.2 °C) and the cold water supply at the water inlets shall be maintained between 55 °F (12.8 °C) and 60 °F (15.6 °C). A water meter shall be installed in both the hot and cold water lines to measure water consumption.

* * * * *

2.6.4.6 The moisture absorption and retention shall be evaluated for each new lot of test cloth by the standard extractor Remaining Moisture Content (RMC) test specified in appendix J3 to 10 CFR part 430 subpart B.

2.6.5. *Application of RMC correction curve.*

2.6.5.1 Using the coefficients A and B calculated in appendix J3 to 10 CFR part 430 subpart B:

$RMC_{corr} = A \times RMC + B$

2.6.5.2 Substitute RMC_{corr} values in calculations in section 3.8 of this appendix.

* * * * *

2.8 *Use of Test Loads.* Use the test load sizes and corresponding water fill settings defined in Table 2.8 when measuring water and energy consumptions. Automatic water fill control system and manual water fill control system are defined in section 1 of this appendix:

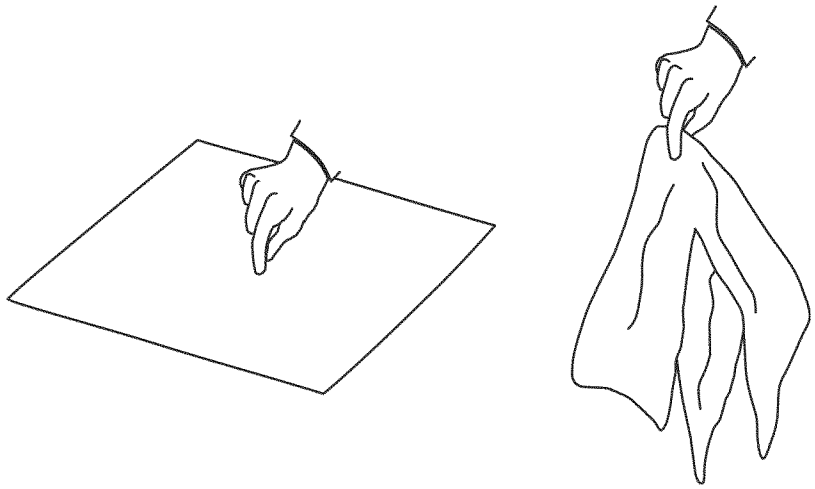
TABLE 2.8—REQUIRED TEST LOAD SIZES AND WATER FILL SETTINGS

Water fill control system type	Test load size	Water fill setting
Manual water fill control system	Max	Max.
	Min	Min.
Automatic water fill control system	Max	As determined by the clothes washer.
	Avg	
	Min	

* * * * *

2.8.3 Prepare the energy test cloths for loading by grasping them in the center, lifting, and shaking them to hang loosely, as illustrated in Figure 2.8.3.1 of this appendix.

Figure 2.8.3.1—Grasping Energy Test Cloths in the Center, Lifting, and Shaking to Hang Loosely



To load the energy test cloths in a top-loading clothes washer, arrange the cloths circumferentially around the axis of rotation of the clothes container, using alternating lengthwise orientations for adjacent pieces of cloth. Complete each cloth layer across its horizontal plane within the clothes container before adding a new layer. Figure 2.8.3.2 of this appendix illustrates the correct loading technique for a vertical-axis clothes washer.

To load the energy test cloths in a front-loading clothes washer, arrange the cloths lengthwise, from front to back, using alternating orientations for adjacent pieces of cloth. Load the cloths evenly across the width of the clothes container. Complete each cloth layer across its horizontal plane within the clothes container before adding a

new layer. Figure 2.8.3.3 of this appendix illustrates the correct loading technique for a horizontal-axis clothes washer.

For all clothes washers, follow any additional manufacturer loading instructions provided to the user regarding the placement of clothing within the clothing container.

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Figure 2.8.3.2—Loading Energy Test Cloths into a Top-Loading Clothes Washer

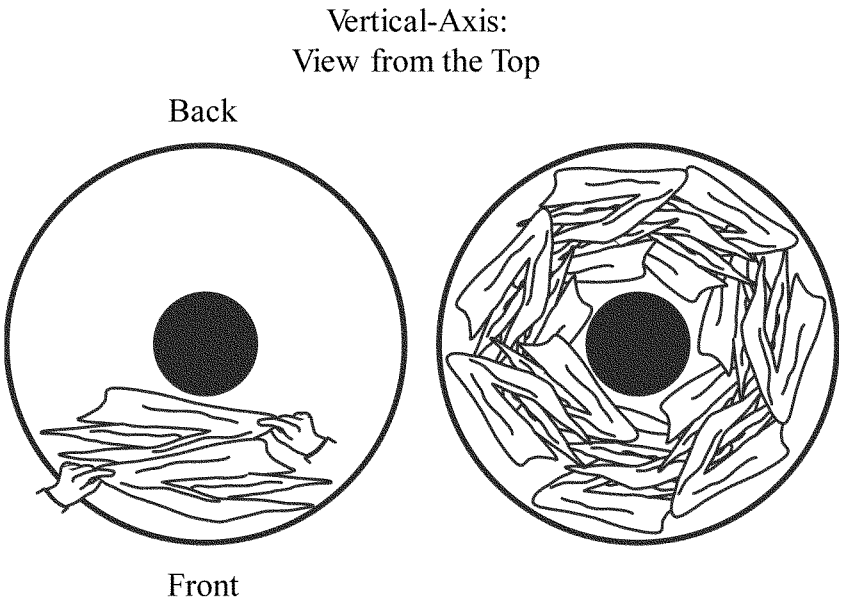
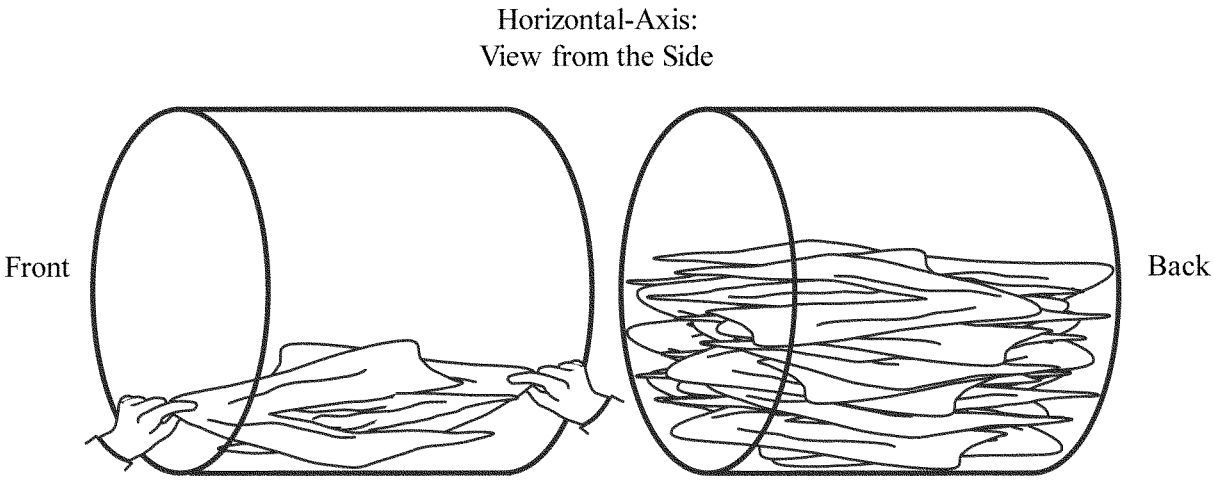


Figure 2.8.3.3—Loading Energy Test Cloths into a Front-Loading Clothes Washer



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* * * * *

3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water. For front-loading clothes washers, the door seal and shipping bolts or other forms of bracing hardware to support the wash drum during shipping must remain in place during the capacity measurement.

If the design of a front-loading clothes washer does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, a laboratory may support the wash drum by other means, including temporary bracing or support beams. Any temporary bracing or support beams must keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. The method used must avoid damage to the unit that would affect the results of the energy and water testing. The test report must document the method used to support the wash drum, and pursuant to § 429.71 of this chapter, the manufacturer must retain such documentation as part of its test records.

3.1.2 Line the inside of the clothes container with a 2 mil thickness (0.051 mm) plastic sheet or plastic bag. All clothes washer components that occupy space within the clothes container and that are recommended for use during a wash cycle must be in place and must be lined with a 2 mil thickness (0.051 mm) plastic sheet or plastic bag to prevent water from entering any void space.

* * * * *

3.1.4 Fill the clothes container manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water to its uppermost edge. For a top-loading, vertical-axis clothes washer, the uppermost edge of the clothes container is defined as the highest point of the innermost diameter of the tub cover. Figure 3.1.4.1 illustrates the maximum fill level for top-loading vertical-axis clothes washers. Figure 3.1.4.2 shows the location of the maximum fill level for a variety of example tub cover designs.

Figure 3.1.4.1—Maximum Fill Level for the Clothes Container Capacity Measurement of Top-Loading Vertical-Axis Clothes Washers

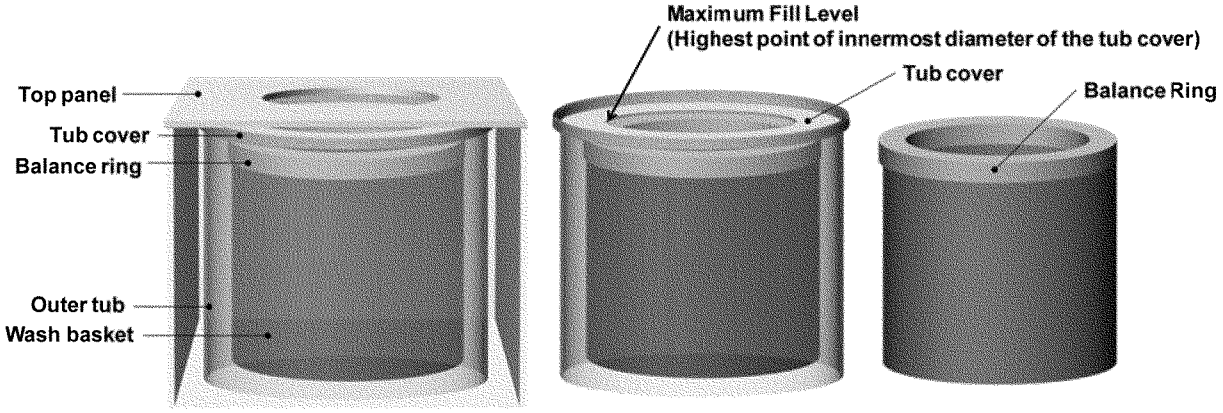
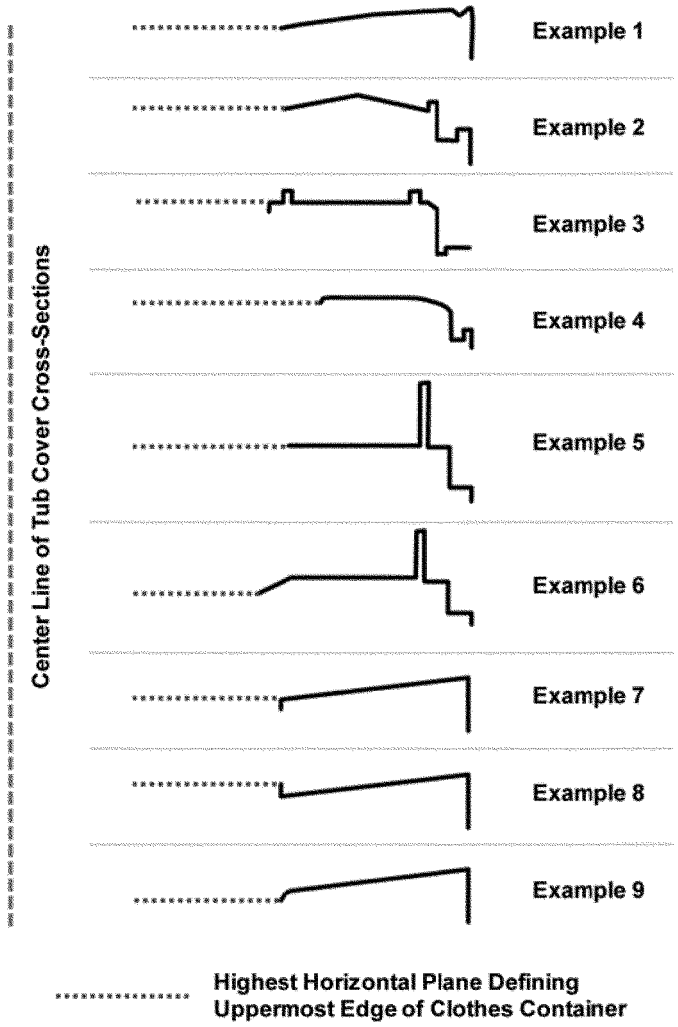


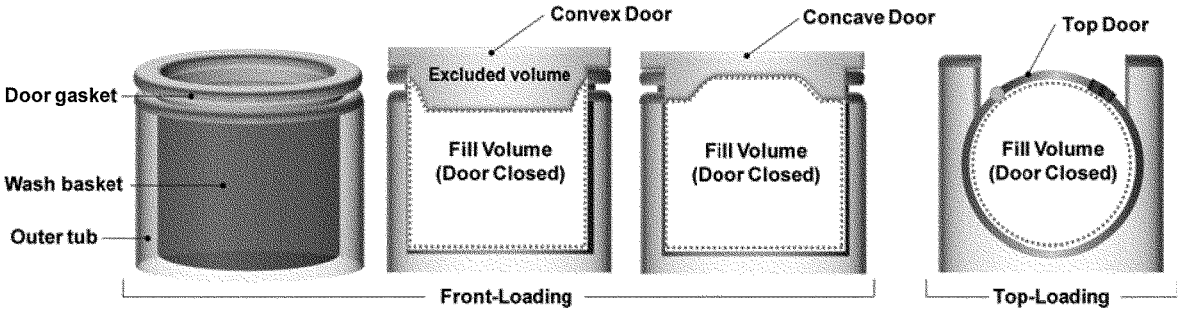
Figure 3.1.4.2— Example Cross-Sections of Tub Covers Showing the Highest Horizontal Plane Defining the Uppermost Edge of the Clothes Container



For a front-loading horizontal-axis clothes washer, fill the clothes container to the highest point of contact between the door and the door gasket. If any portion of the door or gasket would occupy the measured volume space when the door is closed, exclude the volume that the door or gasket portion would occupy from the measurement. For a front-loading horizontal-axis clothes washer with a concave door shape, include any additional volume above the plane defined by the highest point of contact between the door and the door gasket, if that area can be occupied by clothing during washer operation. For a top-loading horizontal-axis clothes washer, include any additional volume above the plane of the door hinge that clothing could occupy during washer operation. Figure 3.1.4.3 illustrates the maximum fill volumes for all horizontal-axis clothes washer types.

Figure 3.1.4.3—Maximum Fill Volumes for the Clothes Container Capacity

Measurement of Horizontal-Axis Clothes Washers



For all clothes washers, exclude any volume that cannot be occupied by the clothing load during operation.

3.1.5 Measure and record the weight of water, W, in pounds.

3.1.6 Calculate the clothes container capacity as follows:

C = W/d

Where:

C = Capacity in cubic feet (liters).
W = Mass of water in pounds (kilograms).
d = Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8 °C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6 °C)).

3.1.7 Calculate the clothes container capacity, C, to the nearest 0.01 cubic foot for the purpose of determining test load sizes per Table 5.1 of this appendix and for all subsequent calculations in this appendix that include the clothes container capacity.

* * * * *

3.2 *Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers.* All energy consumption tests shall be performed under the energy test cycle(s), unless otherwise specified. Table 3.2 indicates the sections below that govern tests of particular clothes washers, based on the number of wash/rinse temperature selections available on the model and also, in some instances, method of water heating. The procedures prescribed are applicable regardless of a clothes washer's washing capacity, loading port location, primary axis of rotation of the clothes container, and type of control system. Data from a wash cycle that terminates prematurely if an out-of-balance condition is detected, and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test, shall be discarded.

* * * * *

3.2.3. *Clothes washers with automatic water fill/manual water fill control systems.*

3.2.3.1 *Clothes washers with automatic water fill control system and alternate manual water fill control system.* If a clothes washer with an automatic water fill control system allows user selection of manual controls as an alternative, then both manual and automatic modes shall be tested and, for each mode, the energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T) values shall be calculated as set forth in section 4. Then the average of the two values (one from each mode, automatic and manual) for each variable shall be used in section 4 for the clothes washer.

3.2.3.2 *Clothes washers with automatic water fill control system.*

* * * * *

3.2.3.2.2 User-adjustable. Four tests shall be conducted on clothes washers with user-adjustable automatic water fill controls that affect the relative wash water levels. The first test shall be conducted using the maximum test load and with the automatic water fill control system set in the setting that will give the most energy intensive result. The second test shall be conducted with the minimum test load and with the automatic water fill control system set in the setting that will give the least energy intensive result. The third test shall be conducted with the average test load and with the automatic water fill control system set in the setting that will give the most energy intensive result for the given test load. The fourth test shall be conducted with the average test load and with the automatic water fill control system set in the setting that will give the least energy intensive result for the given test load. The energy and water consumption for the average test load and water level shall be the average of the third and fourth tests.

* * * * *

TABLE 3.2—TEST SECTION REFERENCE

Max. wash temp. available	≤ 135 °F (57.2 °C)			> 135 °F (57.2 °C) [2]	
Number of wash temp. selections in the energy test cycle	1	2	> 2	3	> 3
Test Sections Required to be Followed				3.3	3.3
		3.4	3.4		3.4
			3.5	3.5	3.5
	3.6	3.6	3.6	3.6	3.6
	[1] 3.7	[1] 3.7	[1] 3.7	[1] 3.7	[1] 3.7
	3.8	3.8	3.8	3.8	3.8

[1] Only applicable to machines with warm rinse in any cycle.
[2] This only applies to water heating clothes washers on which the maximum wash temperature available exceeds 135 °F (57.2 °C).

3.3 *"Extra Hot Wash" (Max Wash Temp > 135 °F (57.2 °C)) for water heating clothes washers only.* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.3.1 through 3.3.3 for the hottest wash setting available. Testing parties may use non-reversible temperature indicator labels, adhered to the inside of the clothes container, to determine the maximum water temperature during the wash cycle. If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the inner circumference of the clothes container drum, midway between the front and the back of the clothes container. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the inner circumference of the clothes

container drum, as close to the bottom of the container as possible.

* * * * *

3.3.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hm_a), cold water consumption (Cm_a), and electrical energy consumption (Em_a) for an extra-hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

* * * * *

3.4.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hh_a), cold water consumption (Ch_a), and electrical energy consumption (Eh_a) for a hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

* * * * *

3.5 *''Warm Wash.''* Water and electrical energy consumption shall be determined for each water fill level and/or test load size as specified in 3.5.1 through 3.5.3 for the applicable warm water wash temperature(s). For a clothes washer with fewer than four discrete warm wash selections, test all warm wash temperature selections. For a clothes washer that offers four or more warm wash selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. Each reportable value to be used for the warm water wash setting shall be the arithmetic average of all tests conducted pursuant to this section.

3.5.1 *Maximum test load and water fill.* Hot water consumption (Hwx), cold water consumption (Cwx), and electrical energy consumption (Ewx) shall be measured with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1.

3.5.2 *Minimum test load and water fill.* Hot water consumption (Hwn), cold water consumption (Cwn), and electrical energy consumption (Ewn) shall be measured with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1.

3.5.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hwa), cold water consumption (Cwa), and electrical energy consumption (Ewa) with an average test load size as determined per Table 5.1.

* * * * *

3.6.3 *Average test load and water fill.* For clothes washers with an automatic water fill control system, measure the values for hot water consumption (Hc_a), cold water consumption (Cc_a), and electrical energy consumption (Ec_a) for a cold wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

* * * * *

3.8.5 The procedure for calculating RMC as defined in section 3.8.2.5, 3.8.3.3., or 3.8.4 of this appendix may be replicated twice in its entirety, for a total of three independent RMC measurements. If three replications of the RMC measurement are performed, use the average of the three RMC measurements as the final RMC in section 4.3 of this appendix.

* * * * *

TABLE 4.1.3—LOAD USAGE FACTORS

Load usage factor	Water fill control system	
	Manual	Automatic
F_{max} = ...	[1] 0.72	[2] 0.12
F_{avg} = ...	.....	[2] 0.74
F_{min} = ...	[1] 0.28	[2] 0.14

[1] Reference 3.2.3.3.
[2] Reference 3.2.3.2.

4.1.4 Removed.

* * * * *

■ 7. Appendix J2 to subpart B of part 430 is revised to read as follows:

Appendix J2 to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-automatic Clothes Washers

Note: Any representation related to the energy or water consumption of clothes washers made after [Date 180 days after date of publication of any test procedure final rule in the **Federal Register**] must be made based upon results generated using this appendix or appendix J1. Any representation related to the energy or water consumption of clothes washers made between [Date 30 days after date of publication of any test procedure final rule in the **Federal Register**] and [Date 180 days after date of publication of any test procedure final rule in the **Federal Register**] must be based upon results generated either under this Appendix J2 or Appendix J1, or upon the test procedures in Appendix J2 or Appendix J1 as they appeared at 10 CFR part 430, subpart B, Appendix J2 or Appendix J1, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2013. Manufacturers must use a single appendix for all representations, including certifications of compliance. Compliance with DOE's amended standards for residential clothes washers, and corresponding use of the test procedures at this appendix for all representations by residential clothes washer manufacturers, including certifications of compliance, is required as of March 7, 2015.

1. Definitions and Symbols

1.1 *Active mode* means a mode in which the clothes washer is connected to a mains power source, has been activated, and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. Active mode also includes delay start and cycle finished modes.

1.2 *Active washing mode* means a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.

1.3 *Adaptive control system* means a clothes washer control system, other than an adaptive water fill control system, that is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring user intervention or actions. The automatic adjustments may, for example, include automatic selection, modification, or control of any of the following: wash water temperature, agitation or tumble cycle time, number of rinse cycles, and spin speed. The characteristics of the clothes load, which could trigger such adjustments, could, for example, consist of or be indicated by the presence of either soil, soap, suds, or any other additive laundering substitute or complementary product.

1.4 *Adaptive water fill control system* means a clothes washer automatic water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

1.5 *Automatic water fill control system* means a clothes washer water fill control system that does not require user intervention or action, and includes adaptive water fill control systems and fixed water fill control systems.

1.6 *Bone-dry* means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

1.7 *Clothes container* means the compartment within the clothes washer that holds the clothes during the operation of the machine.

1.8 *Cold rinse* means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel.

1.9 *Combined low-power mode* means the aggregate of available modes other than active washing mode, including inactive mode, off mode, delay start mode, and cycle finished mode.

1.10 *Compact* means a clothes washer that has a clothes container capacity of less than 1.6 ft^3 (45 L).

1.11 *Cycle finished mode* means an active mode that provides continuous status display, intermittent tumbling, or air circulation following operation in active washing mode.

1.12 *Delay start mode* means an active mode in which activation of active washing mode is facilitated by a timer.

1.13 *Energy test cycle* means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12. Within the energy test cycle, the following definitions apply:

(A) *Cold wash/Cold rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.1 of this appendix.

(B) *Hot wash/Cold rinse* is the wash/rinse temperature selection determined by

evaluating the flowchart in Figure 2.12.2 of this appendix.

(C) *Warm wash/Cold rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.3 of this appendix.

(D) *Warm wash/Warm rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.4 of this appendix.

(E) *Extra Hot wash/Cold rinse* is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.5 of this appendix.

1.14 *Fixed water fill control system* means a clothes washer automatic water fill control system that does not adjust the water fill level based on the size or weight of the clothes load placed in the clothes container.

1.15 *IEC 62301* means the test standard published by the International Electrotechnical Commission, entitled ''Household electrical appliances–Measurement of standby power,'' Publication 62301, Edition 2.0 2011–01 (incorporated by reference; see § 430.3).

1.16 *Inactive mode* means the lowest-power standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.17 *Integrated modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of:

(a) The machine electrical energy consumption;

(b) The hot water energy consumption;

(c) The energy required for removal of the remaining moisture in the wash load; and

(d) The combined low-power mode energy consumption.

1.18 *Integrated water factor* means the quotient of the total weighted per-cycle water consumption for all wash cycles in gallons divided by the cubic foot (or liter) capacity of the clothes washer.

1.19 *Load usage factor* means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

1.20 *Lot* means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

1.21 *Manual control system* means a clothes washer control system that requires that the user make the choices that determine washer operation or washing conditions, such as, for example, wash/rinse temperature selections and wash time, before starting the cycle.

1.22 *Manual water fill control system* means a clothes washer water fill control system that requires the user to determine or select the water fill level.

1.23 *Modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

1.24 *Non-water-heating clothes washer* means a clothes washer that does not have an internal water heating device to generate hot water.

1.25 *Normal cycle* means the cycle selection recommended by the manufacturer as the most common consumer cycle for washing a full load of normally to heavily soiled cotton clothing. For machines where multiple cycle settings meet this description, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.

1.26 *Off mode* means a mode in which the clothes washer is connected to a mains power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.27 *Roll* means a subset of a lot.

1.28 *Standard* means a clothes washer that has a clothes container capacity of 1.6 ft^3 (45 L) or greater.

1.29 *Standby mode* means any mode in which the clothes washer is connected to a mains power source and offers one or more of the following user oriented or protective functions that may persist for an indefinite time:

(a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.30 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

C—Capacity
C (with subscripts)—Cold Water Consumption
D—Energy Consumption for Removal of Moisture from Test Load
E—Electrical Energy Consumption
F—Load Usage Factor
H—Hot Water Consumption
HE—Hot Water Energy Consumption
ME—Machine Electrical Energy Consumption
P—Power
Q—Water Consumption
RMC—Remaining Moisture Content
S—Annual Hours
TUF—Temperature Use Factor
V—Temperature-Weighted Hot Water Consumption
W—Mass of Water
WC—Weight of Test Load After Extraction
WI—Initial Weight of Dry Test Load

Subscripts:

a or avg—Average Test Load
c—Cold Wash (minimum wash temp.)
corr—Corrected (RMC values)
h—Hot Wash (maximum wash temp. ≤135 °F (57.2 °C))
ia—Inactive Mode
LP—Combined Low-Power Mode
m—Extra Hot Wash (maximum wash temp. >135 °F (57.2 °C))
n—Minimum Test Load
o—Off Mode
oi—Combined Off and Inactive Modes
T—Total
w—Warm Wash
ww—Warm Wash/Warm Rinse
x—Maximum Test Load

The following examples are provided to show how the above symbols can be used to define variables:

Em_x = ''Electrical Energy Consumption'' for an ''Extra Hot Wash'' and ''Maximum Test Load''
HE_{min} = ''Hot Water Energy Consumption'' for the ''Minimum Test Load''
P_{ia} = ''Power'' in ''Inactive Mode''
Qh_{min} = ''Water Consumption'' for a ''Hot Wash'' and ''Minimum Test Load''
TUF_m = ''Temperature Use Factor'' for an ''Extra Hot Wash''

1.31 *Temperature use factor* means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

1.32 *Thermostatically controlled water valves* means clothes washer controls that have the ability to sense and adjust the hot and cold supply water.

1.33 *Water factor* means the quotient of the total weighted per-cycle water consumption for cold wash divided by the cubic foot (or liter) capacity of the clothes washer.

1.34 *Water-heating clothes washer* means a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

2. Testing Conditions

2.1 *Electrical energy supply.*

2.1.1 *Supply voltage and frequency.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240, or 120/208Y volts as applicable to the particular terminal block wiring system and within 2 percent of the nameplate frequency as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct test at the highest voltage specified by the manufacturer.

2.1.2 *Supply voltage waveform.* For the combined low-power mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301. If the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, total harmonic content may be measured and recorded immediately before and after the test measurement period.

2.2 *Supply water.*

2.2.1 *Clothes washers in which electrical energy consumption or water energy consumption are affected by the inlet water temperature. (For example, water heating clothes washers or clothes washers with thermostatically controlled water valves).* Maintain the temperature of the hot water

supply at the water inlets between 130 °F (54.4 °C) and 135 °F (57.2 °C). Maintain the temperature of the cold water supply at the water inlets between 55 °F (12.8 °C) and 60 °F (15.6 °C).

2.2.2 *Clothes washers in which electrical energy consumption and water energy consumption are not affected by the inlet water temperature.* Maintain the temperature of the hot water supply at the water inlets at 135 °F ± 5 °F (57.2 °C ± 2.8 °C). Maintain the temperature of the cold water supply at the water inlets at 60 °F ± 5 °F (15.6 °C ± 2.8 °C).

2.3 *Water pressure.* Maintain the static water pressure at the hot and cold water inlet connection of the clothes washer at 35 pounds per square inch gauge (psig) ± 2.5 psig (241.3 kPa ± 17.2 kPa) when the water is flowing.

2.4 *Test room temperature.* For all clothes washers, maintain the test room ambient air temperature at 75 ± 5 °F (23.9 ± 2.8°C) for active mode testing and combined low-power mode testing. Do not use the test room ambient air temperature conditions specified in Section 4, Paragraph 4.2 of IEC 62301 for combined low-power mode testing.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale used for weighing test cloth must have a resolution of no larger than 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurement.* The scale used for performing the clothes container capacity measurement must have a resolution no larger than 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter used to measure electrical energy consumption must have a resolution no larger than 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Watt meter.* The watt meter used to measure combined low-power mode power consumption must comply with the requirements specified in Section 4, Paragraph 4.4 of IEC 62301. If the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, the crest factor, power factor, and maximum current ratio may be measured and recorded immediately before and after the test measurement period.

2.5.4 *Water and air temperature measuring devices.* The temperature devices used to measure water and air temperature must have an error no greater than ±1 °F (±0.6 °C) over the range being measured.

2.5.5 *Water meter.* A water meter must be installed in both the hot and cold water lines to measure water flow and/or water consumption. The water meters must have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured.

2.5.6 *Water pressure gauge.* A water pressure gauge must be installed in both the hot and cold water lines to measure water pressure. The water pressure gauges must have a resolution of 1 pound per square inch gauge (psig) (6.9 kPa) and a maximum error no greater than 5 percent of any measured value.

2.6 *Bone dryer temperature.* The dryer used for bone drying must heat the test cloth load above 210 °F (99 °C).

2.7 *Test cloths.*

2.7.1 *Energy test cloth.* The energy test cloth must be made from energy test cloth material, as specified in section 2.6.4 of this Appendix, that is 24 ± 1/2 inches by 36 ± 1/2 inches (61.0 ± 1.3 cm by 91.4 ± 1.3 cm) and has been hemmed to 22 ± 1/2 inches by 34 ± 1/2 inches (55.9 ± 1.3 cm by 86.4 ± 1.3 cm) before washing. The energy test cloth must be clean and must not be used for more than 60 test runs (after preconditioning as specified in 2.6.3 of this appendix). All energy test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer.

2.7.2 *Energy stuffer cloth.* The energy stuffer cloth must be made from energy test cloth material, as specified in section 2.6.4 of this Appendix, that is 12 ± 1/4 inches by 12 ± 1/4 inches (30.5 ± 0.6 cm by 30.5 ± 0.6 cm) and has been hemmed to 10 ± 1/4 inches by 10 ± 1/4 inches (25.4 ± 0.6 cm by 25.4 ± 0.6 cm) before washing. The energy stuffer cloth must be clean and must not be used for more than 60 test runs (after preconditioning as specified in section 2.6.3 of this Appendix). All energy stuffer cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer.

2.7.3 *Preconditioning of test cloths.* The new test cloths, including energy test cloths and energy stuffer cloths, must be pre-conditioned in a clothes washer in the following manner:

Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per pound of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135 °F ± 5 °F (57.2 °C ± 2.8 °C) and the rinse temperature is to be controlled to 60 °F ± 5 °F (15.6 °C ± 2.8 °C). Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (for a total of five complete wash-rinse-spin cycles).

2.7.4 *Energy test cloth material.* The energy test cloths and energy stuffer cloths must be made from fabric meeting the following specifications:

2.7.4.1 The test cloth material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll. However, other sizes may be used if the test cloth material meets the specifications listed in sections 2.7.4.2 through 2.7.4.7.

2.7.4.2 *Nominal fabric type.* Pure finished bleached cloth made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester.

2.7.4.3 *Fabric weight.* 5.60 ± 0.25 ounces per square yard (190.0 ± 8.4 g/m²).

2.7.4.4 *Thread count.* 65 x 57 per inch (warp × fill), ± 2 percent.

2.7.4.5 *Fiber content of warp and filling yarn.* 50 percent ± 4 percent cotton, with the balance being polyester, open end spun, 15/1 ± 5 percent cotton count blended yarn.

2.7.4.6 Water repellent finishes, such as fluoropolymer stain resistant finishes, must not be applied to the test cloth. Verify the absence of such finishes using the following:

2.7.4.6.1 AATCC Test Method 118–2007, (incorporated by reference; see § 430.3), for each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard™ or other water repellent finish (required scores of ''D'' across the board).

2.7.4.6.2 AATCC Test Method 79–2010, (incorporated by reference; see § 430.3), for each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard™ or other water repellent finish (time to absorb one drop should be on the order of 1 second).

2.7.4.7 The maximum shrinkage after preconditioning must not be more than 5 percent of the length and width. Measure per AATCC Test Method 135–2010, (incorporated by reference; see § 430.3).

2.7.5 The moisture absorption and retention must be evaluated for each new lot of test cloth using the standard extractor Remaining Moisture Content (RMC) procedure specified in appendix J3 to 10 CFR 430 subpart B.

2.8 *Test load sizes.* Use Table 5.1 of this appendix to determine the maximum, minimum, and, when required, average test load sizes based on the clothes container capacity as measured in section 3.1 of this appendix. Test loads must consist of energy test cloths and no more than five energy stuffer clothes per load to achieve the proper weight.

Use the test load sizes and corresponding water fill settings defined in Table 2.8 of this appendix when measuring water and energy consumption. Use only the maximum test load size when measuring RMC.

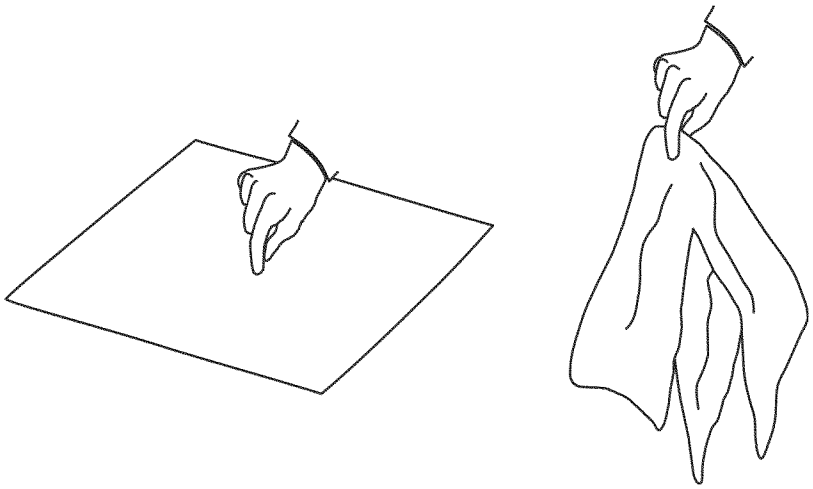
TABLE 2.8—REQUIRED TEST LOAD SIZES AND WATER FILL SETTINGS

Water fill control system type	Test load size	Water fill setting
Manual water fill control system	Max	Max.
	Min	Min.
Automatic water fill control system	Max	As determined by the clothes washer.
	Avg	
	Min	

2.9 *Use of test loads.* 2.9.1 Test loads for energy and water consumption measurements must be bone dry prior to the first cycle of the test, and dried to a maximum of 104 percent of bone dry weight for subsequent testing.

2.9.2 Prepare the energy test cloths for loading by grasping them in the center, lifting, and shaking them to hang loosely, as illustrated in Figure 2.9.2.1 of this appendix.

Figure 2.9.2.1—Grasping Energy Test Cloths in the Center, Lifting, and Shaking to Hang Loosely



To load the energy test cloths in a top-loading clothes washer, arrange the cloths circumferentially around the axis of rotation of the clothes container, using alternating lengthwise orientations for adjacent pieces of cloth. Complete each cloth layer across its horizontal plane within the clothes container before adding a new layer. Figure 2.9.2.2 of this appendix illustrates the correct loading technique for a vertical-axis clothes washer.

To load the energy test cloths in a front-loading clothes washer, arrange the cloths lengthwise, from front to back, using alternating orientations for adjacent pieces of cloth. Load the cloths evenly across the width of the clothes container. Complete each cloth layer across its horizontal plane within the clothes container before adding a new layer. Figure 2.9.2.3 of this appendix illustrates the correct loading technique for a horizontal-axis clothes washer.

For all clothes washers, follow any additional manufacturer loading instructions provided to the user regarding the placement of clothing within the clothing container.

Figure 2.9.2.2—Loading Energy Test Cloths into a Top-Loading Clothes Washer

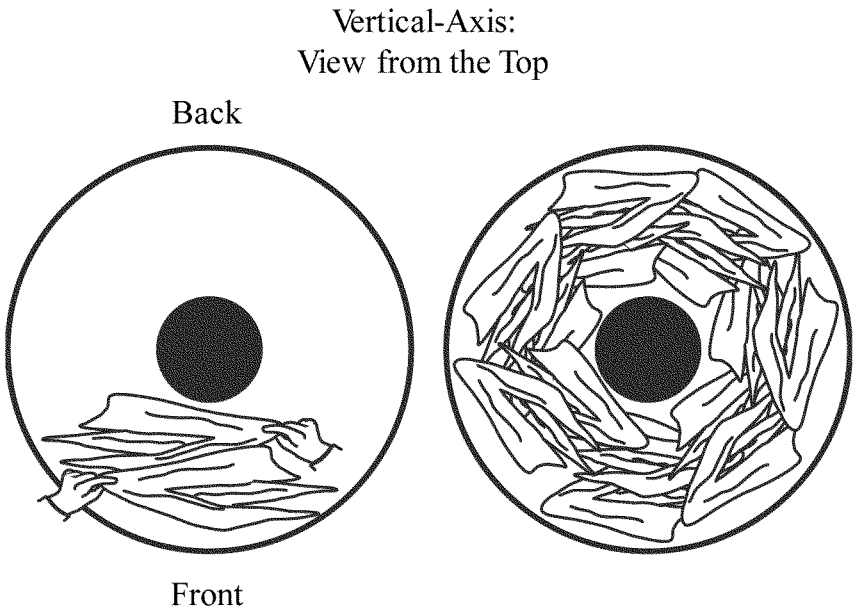
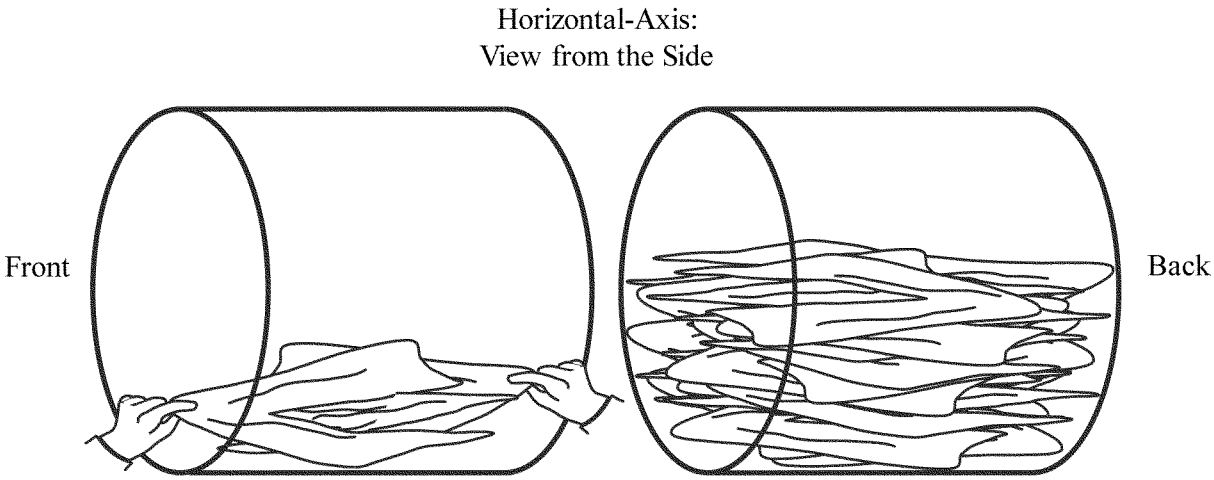


Figure 2.9.2.3—Loading Energy Test Cloths into a Front-Loading Clothes Washer



2.10 *Clothes washer installation.* Install the clothes washer in accordance with manufacturer's instructions. For combined low-power mode testing, install the clothes washer in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.11 *Clothes washer pre-conditioning.*

2.11.1 *Non-water-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.11.2 *Water-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, or if it has not been in the test room at the specified ambient conditions for 8 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.12 *Determining the energy test cycle.* To determine the energy test cycle, evaluate the wash/rinse temperature selection flowcharts in the order in which they are presented in this section. The energy test cycle does not include any cycle, if available, that is recommended by the manufacturer exclusively for cleaning, deodorizing, or sanitizing the clothes washer.

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Figures to Section 2.12, Determining the Energy Test Cycle

Figure 2.12.1—Determination of Cold Wash/Cold Rinse

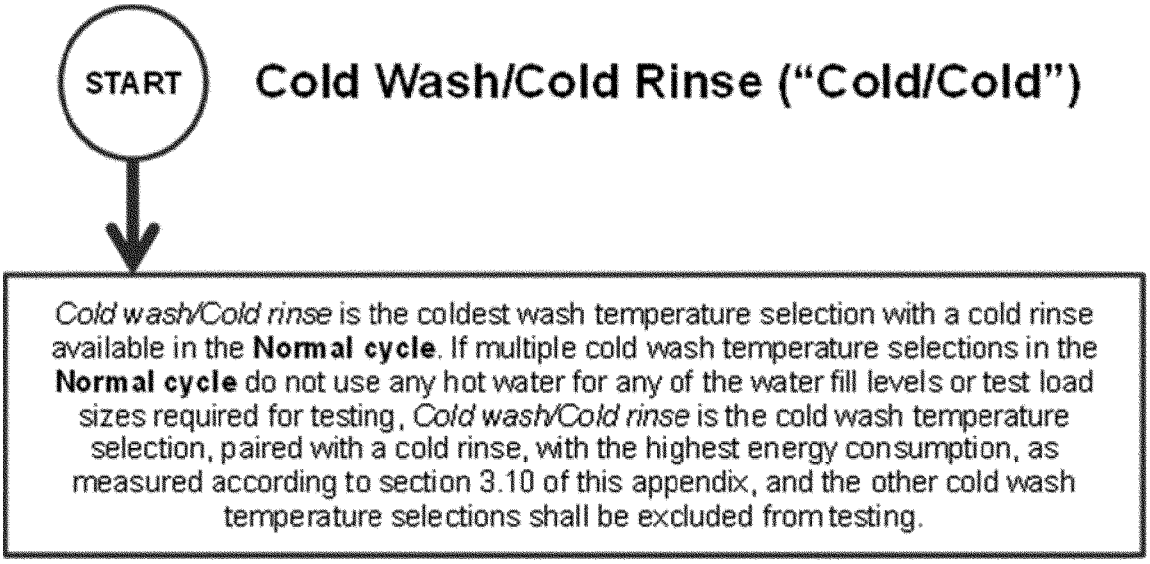


Figure 2.12.2—Determination of Hot Wash/Cold Rinse

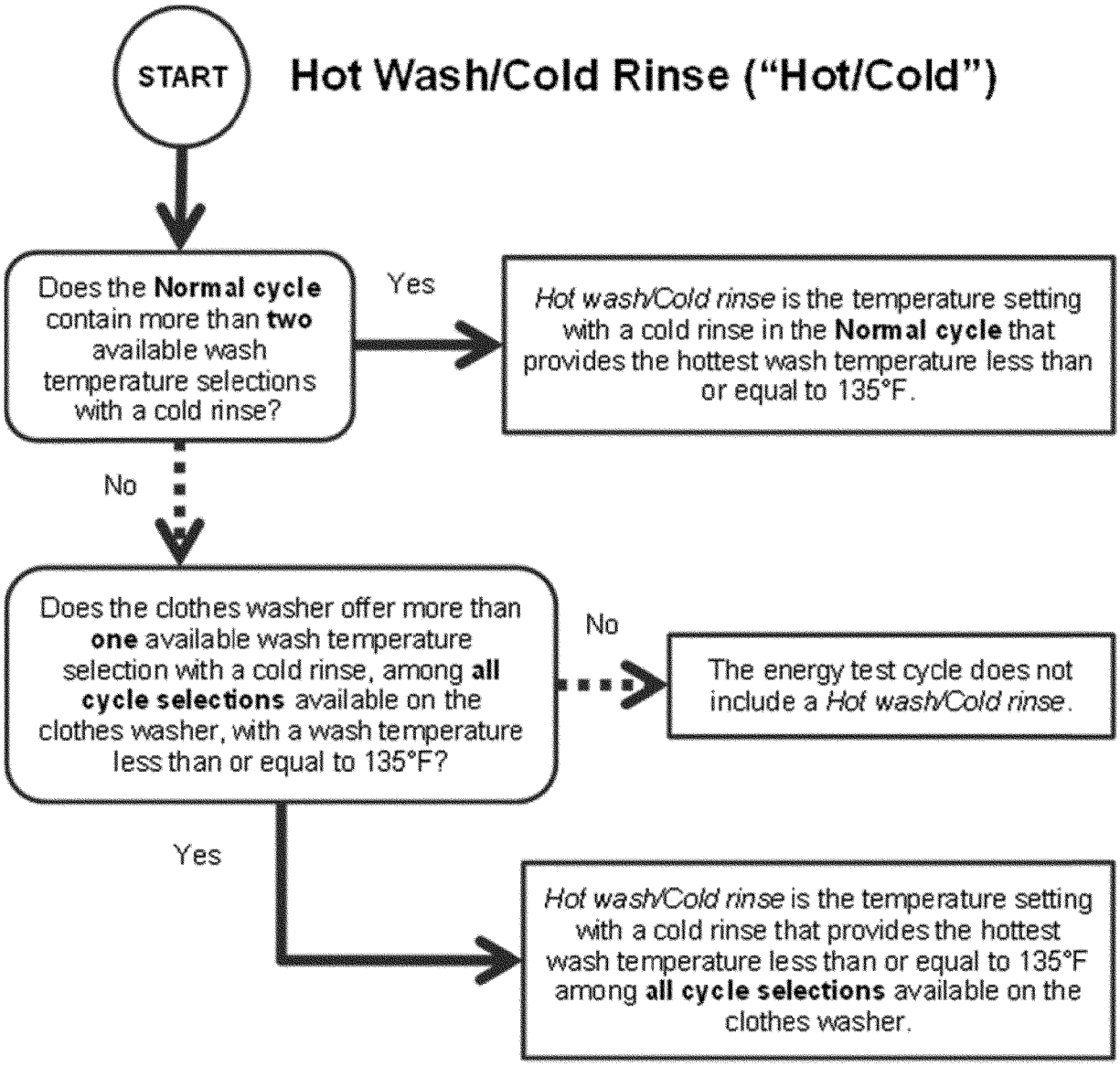


Figure 2.12.3—Determination of Warm Wash/Cold Rinse

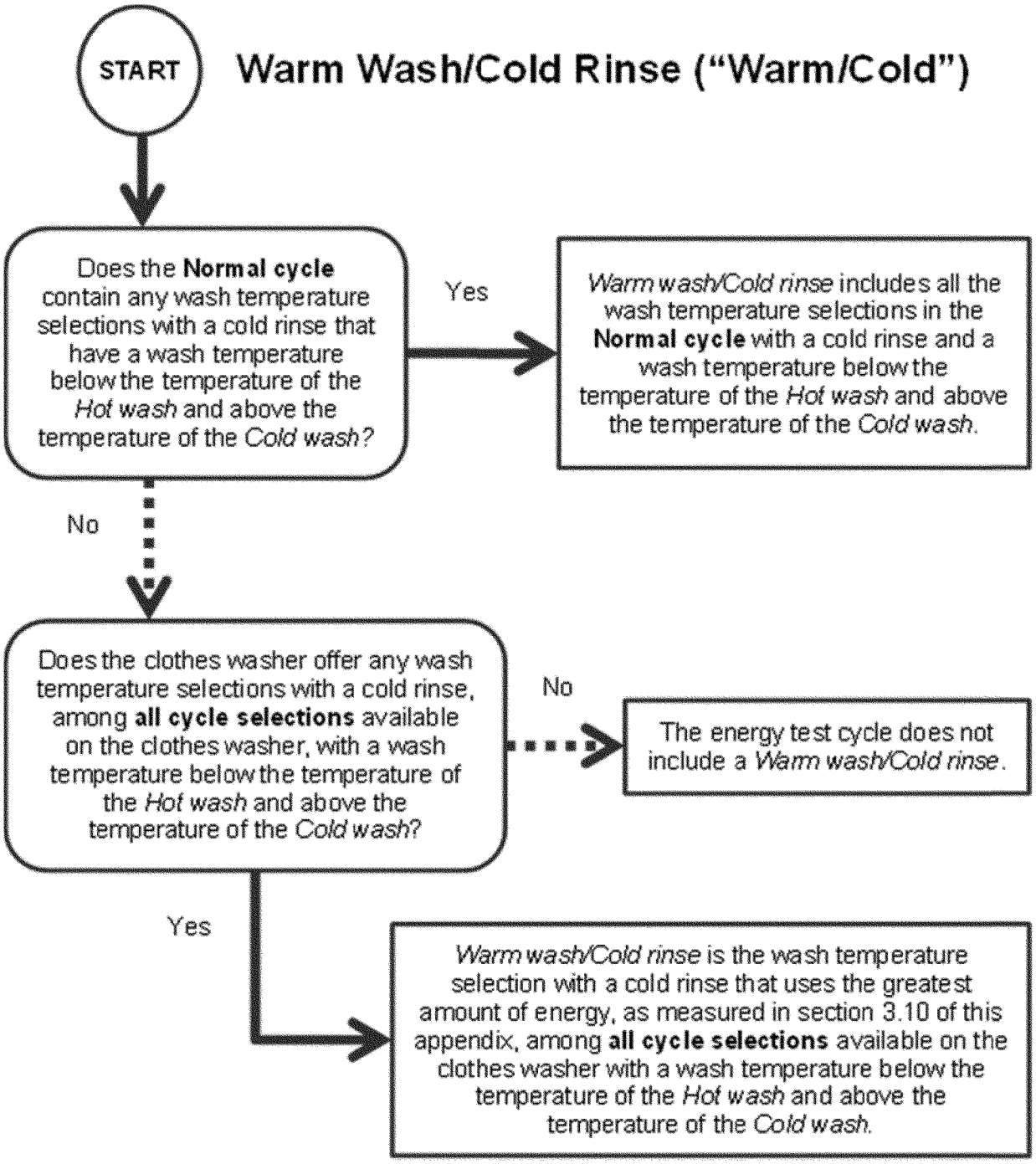


Figure 2.12.4—Determination of Warm Wash/Warm Rinse

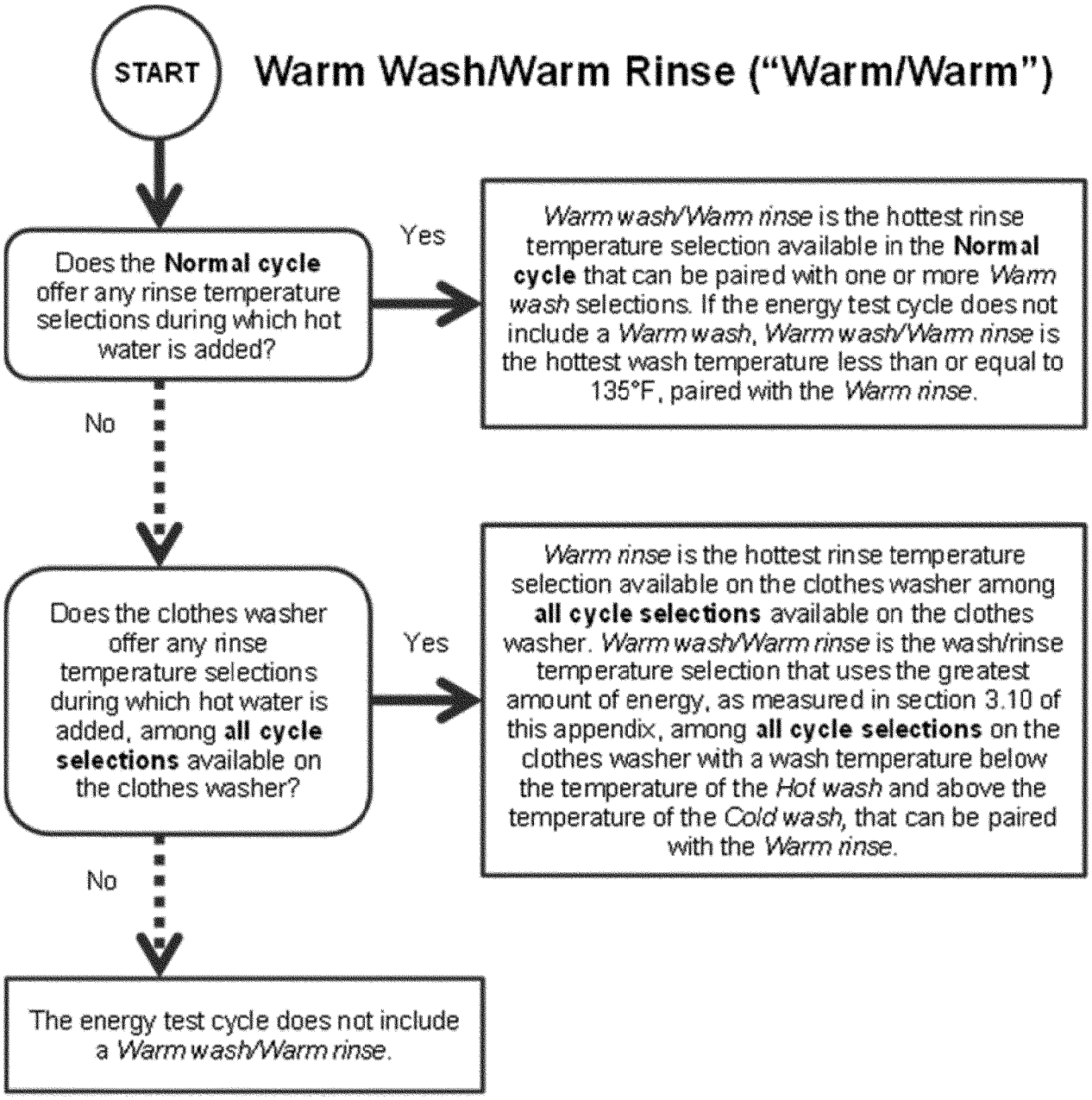
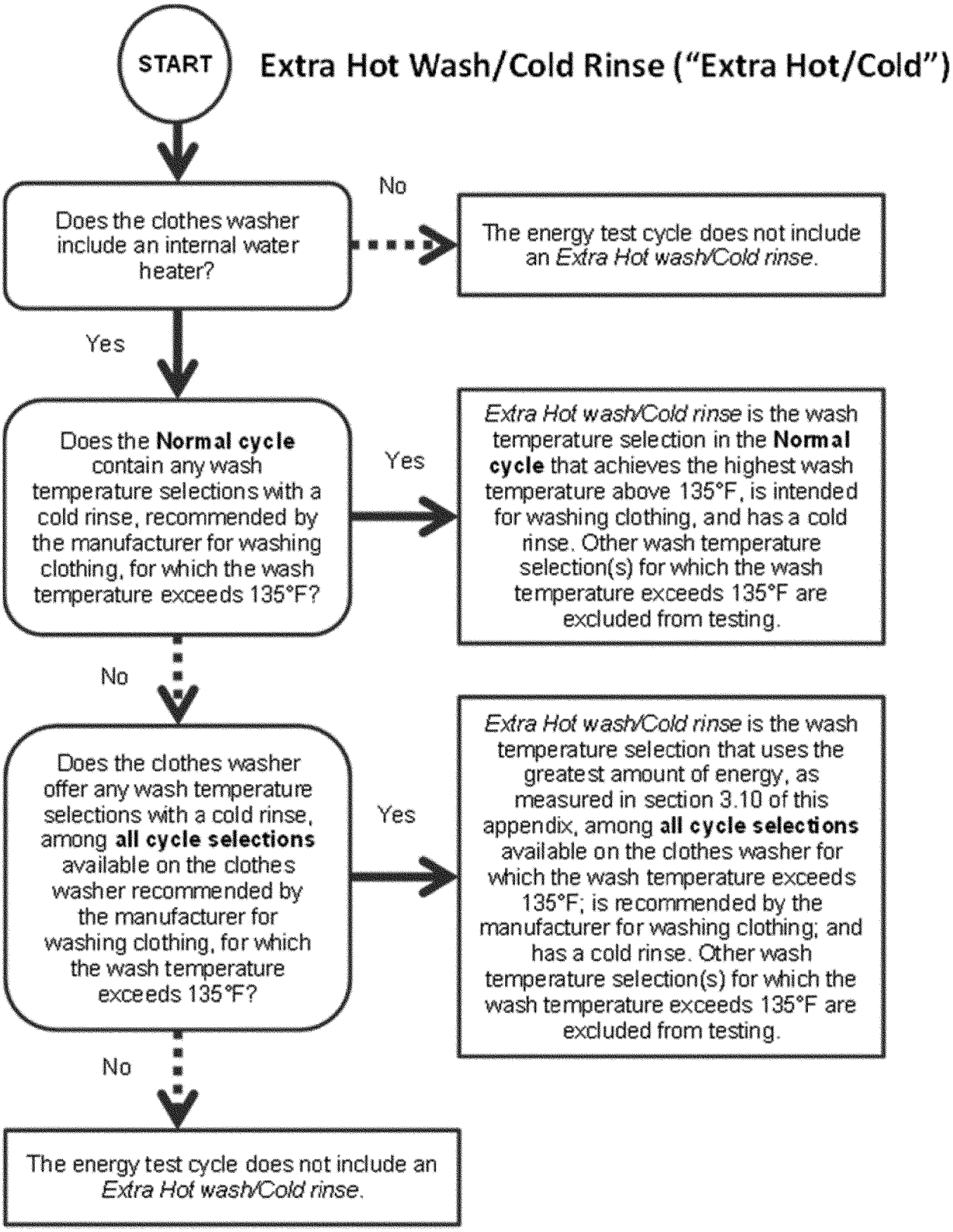


Figure 2.12.5—Determination of Extra Hot Wash/Cold Rinse



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3. Test Measurements

3.1 *Clothes container capacity.* Measure the entire volume that a clothes load could occupy within the clothes container during active mode washer operation according to the following procedures:

3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water. For front-loading clothes washers, the door seal and shipping bolts or other forms of bracing hardware to support the wash drum during shipping must remain in place during the capacity measurement.

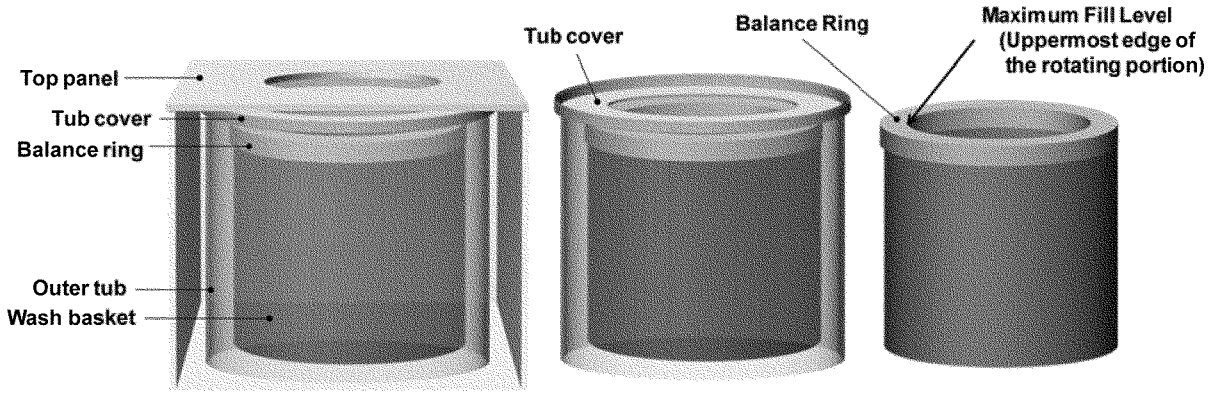
If the design of a front-loading clothes washer does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, a laboratory may support the wash drum by other means, including temporary bracing or support beams. Any temporary bracing or support beams must keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. The method used must avoid damage to the unit that would affect the results of the energy and water testing. The laboratory must fully document the method used to support the wash drum, include such documentation in the final test report, and pursuant to § 429.71 of this chapter, the manufacturer must retain such documentation as part its test records.

3.1.2 Line the inside of the clothes container with a 2 mil thickness (0.051 mm) plastic sheet or plastic bag. All clothes washer components that occupy space within the clothes container and that are recommended for use during a wash cycle must be in place and must be lined with a 2 mil thickness (0.051 mm) plastic sheet or plastic bag to prevent water from entering any void space.

3.1.3 Record the total weight of the machine before adding water.

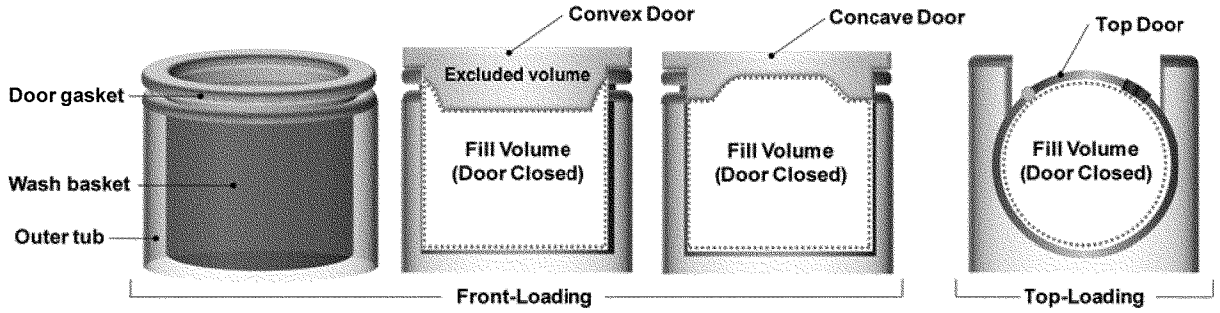
3.1.4 Fill the clothes container manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water, with the door open. For a top-loading vertical-axis clothes washer, fill the clothes container to the uppermost edge of the rotating portion, including any balance ring. Figure 3.1.4.1 of this appendix illustrates the maximum fill level for top-loading clothes washers.

Figure 3.1.4.1—Maximum Fill Level for the Clothes Container Capacity Measurement of Top-Loading Vertical-Axis Clothes Washers



For a front-loading horizontal-axis clothes washer, fill the clothes container to the highest point of contact between the door and the door gasket. If any portion of the door or gasket would occupy the measured volume space when the door is closed, exclude from the measurement the volume that the door or gasket portion would occupy. For a front-loading horizontal-axis clothes washer with a concave door shape, include any additional volume above the plane defined by the highest point of contact between the door and the door gasket, if that area can be occupied by clothing during washer operation. For a top-loading horizontal-axis clothes washer, include any additional volume above the plane of the door hinge that clothing could occupy during washer operation. Figure 3.1.4.2 of this appendix illustrates the maximum fill volumes for all horizontal-axis clothes washer types.

Figure 3.1.4.2—Maximum Fill Volumes for the Clothes Container Capacity Measurement of Horizontal-Axis Clothes Washers



For all clothes washers, exclude any volume that cannot be occupied by the clothing load during operation.

3.1.5 Measure and record the weight of water, W, in pounds.

3.1.6 Calculate the clothes container capacity as follows:

$C = W/d$

Where:

C = Capacity in cubic feet (liters).
W = Mass of water in pounds (kilograms).
d = Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8 °C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6 °C)).

3.1.7 Calculate the clothes container capacity, C, to the nearest 0.01 cubic foot for the purpose of determining test load sizes per Table 5.1 of this appendix and for all subsequent calculations that include the clothes container capacity.

3.2 *Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers.*

3.2.1 Perform all energy consumption tests under the energy test cycle.

3.2.2 Perform the test sections listed in Table 3.2.2 in accordance with the wash/rinse temperature selections available in the energy test cycle.

TABLE 3.2.2—TEST SECTION REFERENCE

Wash/rinse temperature selections available in the energy test cycle	Corresponding test section reference
Extra Hot/Cold	3.3
Hot/Cold	3.4
Warm/Cold	3.5
Warm/Warm	3.6
Cold/Cold	3.7
Test Sections Applicable to all Clothes Washers	
Remaining Moisture Content	3.8
Combined Low-Power Mode Power	3.9

3.2.3 *Hot and cold water faucets.*

3.2.3.1 For automatic clothes washers, open both the hot and cold water faucets.

3.2.3.2 For semi-automatic washers:

(1) For hot inlet water temperature, open the hot water faucet completely and close the cold water faucet;

(2) For warm inlet water temperature, open both hot and cold water faucets completely;

(3) For cold inlet water temperature, close the hot water faucet and open the cold water faucet completely.

3.2.4 *Wash/rinse temperature selection.* Set the wash/rinse temperature selection control to obtain the desired wash/rinse temperature selection within the energy test cycle.

3.2.5 *Wash time setting.* If one wash time is prescribed for the wash cycle under test, that shall be the wash time setting; otherwise, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations. If the clothes washer is equipped with an electromechanical dial controlling wash time, reset the dial to the minimum wash time and then turn it in the direction of increasing wash time to reach the appropriate setting. If the appropriate setting is passed, return the dial to the minimum wash time and then turn in the direction of increasing wash time until the appropriate setting is reached.

3.2.6 *Water fill levels.*

3.2.6.1 *Clothes washers with manual water fill control system.* Set the water fill selector to the maximum water level available for the maximum test load size and the minimum water level available for the minimum test load size.

3.2.6.2 *Clothes washers with automatic water fill control system.*

3.2.6.2.1 *Not user adjustable.* The maximum, minimum, and average water levels as described in the following sections refer to the amount of water fill that is automatically selected by the control system when the respective test loads are used.

3.2.6.2.2 *User adjustable.* Conduct four tests on clothes washers with user adjustable automatic water fill controls that affect the relative wash water levels. Conduct the first test using the maximum test load and with the automatic water fill control system set in the setting that will give the most energy intensive result. Conduct the second test using the minimum test load and with the automatic water fill control system set in the setting that will give the least energy intensive result. Conduct the third test using the average test load and with the automatic water fill control system set in the setting that will give the most energy intensive result for the given test load. Conduct the fourth test using the average test load and with the automatic water fill control system set in the setting that will give the least energy intensive result for the given test load. Average the results of the third and fourth tests to obtain the energy and water consumption values for the average test load size.

3.2.6.3 *Clothes washers with automatic water fill control system and alternate manual water fill control system.* If a clothes washer with an automatic water fill control system allows user selection of manual controls as an alternative, test both manual and automatic modes and, for each mode, calculate the energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T) values as set forth in section 4 of this appendix. Then, calculate the average of the two values (one from each mode, automatic and manual) for each variable (HE_T, ME_T, D_E, and Q_T) and use the average value for each variable in the final calculations in section 4 of this appendix.

3.2.7 *Manufacturer default settings.* For all wash cycles tested, use the manufacturer default settings, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content. This includes wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Include any optional wash cycle feature for testing (other than wash/rinse temperature, water fill level selection, or spin speed on wash cycles used to determine remaining moisture content) that is activated by default on the wash cycle under test unless the manufacturer instructions recommend not selecting this option for washing normally soiled cotton or linen clothes.

3.2.8 For each wash cycle tested, include the entire active washing mode and exclude any delay start or cycle finished modes.

3.2.9 Discard the data from a wash cycle that terminates prematurely if an out-of-balance condition is detected, and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test.

3.3 *Extra Hot wash/Cold rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.3.1 through 3.3.3 of this appendix for the Extra Hot wash/Cold rinse as defined within the energy test cycle.

Testing parties may use non-reversible temperature indicator labels, adhered to the inside of the clothes container, to determine the maximum water temperature during the wash cycle. If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the inner circumference of the clothes container drum, midway between the front and the back of the clothes container. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the inner circumference of the clothes container drum, as close to the bottom of the container as possible.

3.3.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hm_x), cold water consumption (Cm_x), and electrical energy consumption (Em_x) for an Extra Hot wash/Cold rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.3.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hm_n), cold water consumption (Cm_n), and electrical energy consumption (Em_n) for an Extra Hot wash/Cold rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.3.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hm_a), cold water consumption (Cm_a), and electrical energy consumption (Em_a) for an Extra Hot wash/Cold rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.4 *Hot wash/Cold rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.4.1 through 3.4.3 of this appendix for the Hot wash/Cold rinse temperature selection, as defined within the energy test cycle.

3.4.1 *Maximum test load and water fill.* Measure the values for hot water

consumption (Hh_x), cold water consumption (Ch_x), and electrical energy consumption (Eh_x) for a Hot wash/Cold rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.4.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hh_n), cold water consumption (Ch_n), and electrical energy consumption (Eh_n) for a Hot wash/Cold rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.4.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hh_a), cold water consumption (Ch_a), and electrical energy consumption (Eh_a) for a Hot wash/Cold rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.5 *Warm wash/Cold rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in 3.5.1 through 3.5.3 of this appendix for the applicable Warm wash/Cold rinse temperature selection(s), as defined within the energy test cycle.

For a clothes washer with fewer than four discrete Warm wash/Cold rinse temperature selections, test all Warm wash/Cold rinse selections. For a clothes washer that offers four or more Warm wash/Cold rinse selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤ 135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection, use the next warmer setting. For each reportable value to be used for the Warm wash/Cold rinse temperature selection, calculate the average of all Warm wash/Cold rinse temperature selections tested pursuant to this section.

3.5.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hw_x), cold water consumption (Cw_x), and electrical energy consumption (Ew_x) for the Warm wash/Cold rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.5.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hw_n), cold water consumption (Cw_n), and electrical energy consumption (Ew_n) for the Warm wash/Cold rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.5.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hw_a), cold water consumption (Cw_a), and electrical energy consumption (Ew_a) for a Warm wash/Cold rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.6 *Warm wash/Warm rinse.* Measure the water and electrical energy consumption for each water fill level and/or test load size as specified in 3.6.1 through 3.6.3 of this appendix for the applicable Warm wash/Warm rinse temperature selection(s), as defined within the energy test cycle.

For a clothes washer with fewer than four discrete Warm wash/Warm rinse temperature selections, test all Warm wash/Warm rinse selections. For a clothes washer that offers four or more Warm wash/Warm rinse selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. For each reportable value to be used for the Warm wash/Warm rinse temperature selection, calculate the arithmetic average of all Warm wash/Warm rinse temperature selections tested pursuant to this section.

3.6.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hww_x), cold water consumption (Cww_x), and electrical energy consumption (Eww_x) for the Warm wash/Warm rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.6.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hww_n), cold water consumption (Cww_n), and electrical energy consumption (Eww_n) for the Warm wash/Warm rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.6.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hww_a), cold water consumption (Cww_a), and electrical energy consumption (Eww_a) for the Warm wash/Warm rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.7 *Cold wash/Cold rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.7.1 through 3.7.3 of this appendix for the applicable Cold wash/Cold rinse temperature selection, as defined within the energy test cycle.

3.7.1 *Maximum test load and water fill.* Measure the values for hot water consumption (Hc_x), cold water consumption (Cc_x), and electrical energy consumption (Ec_x) for a cold wash/cold rinse cycle, with the controls set for the maximum water fill level. Use the maximum test load size as specified in Table 5.1 of this appendix.

3.7.2 *Minimum test load and water fill.* Measure the values for hot water consumption (Hc_n), cold water consumption (Cc_n), and electrical energy consumption (Ec_n) for a cold wash/cold rinse cycle, with the controls set for the minimum water fill level. Use the minimum test load size as specified in Table 5.1 of this appendix.

3.7.3 *Average test load and water fill.* For a clothes washer with an automatic water fill control system, measure the values for hot water consumption (Hc_a), cold water consumption (Cc_a), and electrical energy consumption (Ec_a) for a cold wash/cold rinse cycle. Use the average test load size as specified in Table 5.1 of this appendix.

3.8 *Remaining moisture content (RMC).*

3.8.1 The wash temperature must be the same as the rinse temperature for all testing. Use the maximum test load as defined in Table 5.1 of this appendix for testing.

3.8.2 *Clothes washers with cold rinse only.*

3.8.2.1 Record the actual ''bone dry'' weight of the test load (WI_x), then place the test load in the clothes washer.

3.8.2.2 Set the water level controls to maximum fill.

3.8.2.3 Run the Cold wash/Cold rinse cycle.

3.8.2.4 Record the weight of the test load immediately after completion of the wash cycle (WC_x).

3.8.2.5 Calculate the remaining moisture content of the maximum test load, RMC_x, defined as:

$$RMC_x = (WC_x - WI_x)/WI_x$$

3.8.2.6 Apply the RMC correction curve described in section 6.3 of this appendix to calculate the corrected remaining moisture content, RMC_{corr}, expressed as a percentage as follows:

$$RMC_{corr} = (A \times RMC_x + B) \times 100\%$$

Where:

A and B are the coefficients of the RMC correction curve as defined in section 6.2.1 of this appendix.

RMC_x = As defined in section 3.8.2.5 of this appendix.

3.8.2.7 Use RMC_{corr} as the final corrected RMC in section 4.3 of this appendix.

3.8.3 *Clothes washers with both cold and warm rinse options.*

3.8.3.1 Complete sections 3.8.2.1 through 3.8.2.4 of this appendix for a Cold wash/Cold rinse cycle. Calculate the remaining moisture content of the maximum test load for Cold wash/Cold rinse, RMC_{COLD}, defined as:

$$RMC_{COLD} = (WC_x - WI_x)/WI_x$$

3.8.3.2 Apply the RMC correction curve described in section 6.3 of this appendix to calculate the corrected remaining moisture content for Cold wash/Cold rinse, $RMC_{COLD,corr}$, expressed as a percentage, as follows:

$$RMC_{COLD,corr} = (A \times RMC_{COLD} + B) \times 100\%$$

Where:

A and B are the coefficients of the RMC correction curve as defined in section 6.2.1 of this appendix.

RMC_{COLD} = As defined in section 3.8.3.1 of this appendix.

3.8.3.3 Complete sections 3.8.2.1 through 3.8.2.4 of this appendix using a Warm wash/Warm rinse cycle instead. Calculate the remaining moisture content of the maximum test load for Warm wash/Warm rinse, RMC_{WARM}, defined as:

$$RMC_{WARM} = (WC_x - WI_x)/WI_x$$

3.8.3.4 Apply the RMC correction curve described in section 6.3 of this appendix to calculate the corrected remaining moisture content for Warm wash/Warm rinse, $RMC_{WARM,corr}$, expressed as a percentage, as follows:

$$RMC_{WARM,corr} = (A \times RMC_{WARM} + B) \times 100\%$$

Where:

A and B are the coefficients of the RMC correction curve as defined in section 6.2.1 of this appendix.

RMC_{WARM} = As defined in section 3.8.3.3 of this appendix.

3.8.3.5 Calculate the corrected remaining moisture content of the maximum test load, RMC_{corr}, expressed as a percentage as follows:

$$RMC_{corr} = RMC_{COLD,corr} \times (1 - TUF_{ww}) + RMC_{WARM,corr} \times (TUF_{ww})$$

Where:

$RMC_{COLD,corr}$ = As defined in section 3.8.3.2 of this Appendix.

$RMC_{WARM,corr}$ = As defined in section 3.8.3.4 of this Appendix.

TUF_{ww} is the temperature use factor for Warm wash/Warm rinse as defined in Table 4.1.1 of this appendix.

3.8.3.6 Use RMC_{corr} as calculated in section 3.8.3.5 as the final corrected RMC used in section 4.3 of this appendix.

3.8.4 *Clothes washers that have options such as multiple selections of spin speeds or spin times that result in different RMC values, and that are available within the energy test cycle.*

3.8.4.1 Complete sections 3.8.2 or 3.8.3 of this appendix, as applicable, using the maximum and minimum extremes of the available spin options, excluding any ''no spin'' (zero spin speed) settings. Combine the calculated values $RMC_{corr,max\ extraction}$ and $RMC_{corr,min\ extraction}$ at the maximum and minimum settings, respectively, as follows:

$$RMC_{corr} = 0.75 \times RMC_{corr,max\ extraction} + 0.25 \times RMC_{corr,min\ extraction}$$

Where:

$RMC_{corr,max\ extraction}$ is the corrected remaining moisture content using the maximum spin setting, calculated according to section 3.8.2 or 3.8.3 of this appendix, as applicable.

$RMC_{corr,min\ extraction}$ is the corrected remaining moisture content using the minimum spin setting, calculated according to section 3.8.2 or 3.8.3 of this appendix, as applicable.

3.8.4.2 Use RMC_{corr} as calculated in section 3.8.4.1 as the final corrected RMC used in section 4.3 of this appendix.

3.8.5 The procedure for calculating the corrected RMC as described in section 3.8.2, 3.8.3, or 3.8.4 of this appendix may be replicated twice in its entirety, for a total of three independent corrected RMC measurements. If three replications of the RMC measurement are performed, use the average of the three corrected RMC measurements as the final corrected RMC in section 4.3 of this appendix.

3.9 *Combined low-power mode power.* Connect the clothes washer to a watt meter as specified in section 2.5.3 of this appendix. Establish the testing conditions set forth in sections 2.1, 2.4, and 2.10 of this appendix. Perform combined low-power mode testing after completion of an active mode wash cycle included as part of the energy test cycle; after removing the test load; without changing the control panel settings used for the active mode wash cycle; and without disconnecting the electrical energy supply to the clothes washer between completion of the active mode wash cycle and the start of combined low-power mode testing. For a clothes washer that takes some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the clothes washer to reach the lower power state before proceeding with the test measurement. Follow the test procedure for the sampling method specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in either inactive mode, off mode, or both, as described in sections 3.9.1 and 3.9.2 of this appendix.

3.9.1. If a clothes washer has an inactive mode as defined in section 1.16 of this appendix, measure and record the average inactive mode power of the clothes washer, P_{ia}, in Watts, for that mode.

3.9.2. If a clothes washer has an off mode as defined in section 1.26 of this appendix, measure and record its average off mode power, P_o, in watts, for that mode.

3.10 *Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle.* This section is implemented only in cases where the energy test cycle flowcharts in section 2.12 require the determination of the wash/rinse temperature selection with the highest energy consumption.

3.10.1 For the wash/rinse temperature selection being considered under this section, establish the testing conditions set forth in section 2 of this appendix. Select the applicable cycle selection and wash/rinse temperature selection. For all wash/rinse temperature selections, the manufacturer default settings shall be used as described in section 3.2.7 of this appendix.

3.10.2 Use the clothes washer's maximum test load size, determined from Table 5.1 of this appendix, for testing under this section.

3.10.3 For clothes washers with a manual fill control system, user-adjustable automatic water fill control system, or automatic water fill control system with alternate manual water fill control system, use the water fill selector setting resulting in the maximum water level available for each cycle selection for testing under this section.

3.10.3 Each wash cycle tested under this section shall include the entire active washing mode and exclude any delay start or cycle finished modes.

3.10.4 Measure each wash cycle's electrical energy consumption (E_X) and hot water consumption (H_X). Calculate the total energy consumption for each cycle selection (E_{TX}), as follows:

$$E_{TX} = E_X + (H_X \times T \times K)$$

Where:

E_X is the electrical energy consumption, expressed in kilowatt-hours per cycle.

H_X is the hot water consumption, expressed in gallons per cycle.

T = nominal temperature rise = 75 °F (41.7 °C)

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal-°F (0.00114 kWh/L-°C)

4. Calculation of Derived Results From Test Measurements

4.1 *Hot water and machine electrical energy consumption of clothes washers.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for all maximum, average, and minimum water fill levels tested.* Calculate the per-cycle temperature-weighted hot water consumption for the maximum water fill level, Vh_x, the average water fill level, Vh_a, and the minimum water fill level, Vh_n, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Vh_x = [Hm_x \times TUF_m] + [Hh_x \times TUF_h] + [Hw_x \times TUF_w] + [Hww_x \times TUF_{ww}] + [Hc_x \times TUF_c]$

(b) $Vh_a = [Hm_a \times TUF_m] + [Hh_a \times TUF_h] + [Hw_a \times TUF_w] + [Hww_a \times TUF_{ww}] + [Hc_a \times TUF_c]$

(c) $Vh_n = [Hm_n \times TUF_m] + [Hh_n \times TUF_h] + [Hw_n \times TUF_w] + [Hww_n \times TUF_{ww}] + [Hc_n \times TUF_c]$

Where:

Hm_x, Hm_a, and Hm_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Extra Hot wash/Cold rinse cycle, as measured in sections 3.3.1 through 3.3.3 of this appendix.

Hh_x, Hh_a, and Hh_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Hot wash/Cold rinse cycle, as measured in sections 3.4.1 through 3.4.3 of this appendix.

Hw_x, Hw_a, and Hw_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Warm wash/Cold rinse cycle, as measured in sections 3.5.1 through 3.5.3 of this appendix.

Hww_x, Hww_a, and Hww_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Warm wash/Warm rinse cycle, as measured in sections 3.6.1 through 3.6.3 of this appendix.

Hc_x, Hc_a, and Hc_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill levels, respectively, for the Cold wash/Cold rinse cycle, as measured in sections 3.7.1 through 3.7.3 of this appendix.

TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are temperature use factors for Extra Hot wash/Cold rinse, Hot wash/Cold rinse, Warm wash/Cold rinse, Warm wash/Warm rinse, and Cold wash/Cold rinse temperature selections, respectively, as defined in Table 4.1.1 of this appendix.

TABLE 4.1.1—TEMPERATURE USE FACTORS

Wash/Rinse temperature selections available in the energy test cycle	Clothes washers with cold rinse only					Clothes washers with both cold and warm rinse		
	C/C	H/C C/C	H/C W/C C/C	XH/C H/C C/C	XH/C H/C W/C C/C	H/C W/C W/W C/C	XH/C H/C W/W C/C	XH/C H/C W/C W/W C/C
TUF_m (Extra Hot/Cold)	.....	.....	.....	0.14	0.05	.....	0.14	0.05
TUF_h (Hot/Cold)	.....	0.63	0.14	* 0.49	0.09	0.14	* 0.22	0.09
TUF_w (Warm/Cold)	.....	.....	0.49	.....	0.49	0.22	.....	0.22
TUF_{ww} (Warm/Warm)	.....	.....	.....	.....	.....	0.27	0.27	0.27
TUF_c (Cold/Cold)	1.00	0.37	0.37	0.37	0.37	0.37	0.37	0.37

* On clothes washers with only two wash temperature selections ≤135 °F, the higher of the two wash temperatures is classified as a Hot wash/Cold rinse, in accordance with the wash/rinse temperature definitions within the energy test cycle.

4.1.2 *Total per-cycle hot water energy consumption for all maximum, average, and minimum water fill levels tested.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, HE_{max}, the average water fill level, HE_{avg}, and the minimum water fill level, HE_{min}, expressed in kilowatt-hours per cycle and defined as:

(a) $HE_{max} = [Vh_x \times T \times K]$ = Total energy when a maximum load is tested.

(b) $HE_{avg} = [Vh_a \times T \times K]$ = Total energy when an average load is tested.

(c) $HE_{min} = [Vh_n \times T \times K]$ = Total energy when a minimum load is tested.

Where:

Vh_x, Vh_a, and Vh_n are defined in section 4.1.1 of this appendix.

T = Temperature rise = 75 °F (41.7 °C).

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal-°F (0.00114 kWh/L-°C).

4.1.3 *Total weighted per-cycle hot water energy consumption.* Calculate the total weighted per-cycle hot water energy consumption, HE_T, expressed in kilowatt-hours per cycle and defined as:

$HE_T = [HE_{max} \times F_{max}] + [HE_{avg} \times F_{avg}] + HE_{min} \times F_{min}]$

Where:

HE_{max}, HE_{avg}, and HE_{min} are defined in section 4.1.2 of this appendix.

F_{max}, F_{avg}, and F_{min} are the load usage factors for the maximum, average, and minimum test loads based on the size and type of the control system on the washer being tested, as defined in Table 4.1.3 of this appendix.

TABLE 4.1.3—LOAD USAGE FACTORS

Load usage factor	Water fill control system	
	Manual	Automatic
F_{max} = ...	0.72	0.12
F_{avg} = ...	.....	0.74
F_{min} = ...	0.28	0.14

4.1.4 *Per-cycle machine electrical energy consumption for all maximum, average, and minimum test load sizes.* Calculate the total per-cycle machine electrical energy consumption for the maximum water fill level, ME_{max}, the average water fill level, ME_{avg}, and the minimum water fill level, ME_{min}, expressed in kilowatt-hours per cycle and defined as:

(a) $ME_{max} = [Em_x \times TUF_m] + [Eh_x \times TUF_h] + [Ew_x \times TUF_w] + [Eww_x \times TUF_{ww}] + [Ec_x \times TUF_c]$

(b) $ME_{avg} = [Em_a \times TUF_m] + [Eh_a \times TUF_h] + [Ew_a \times TUF_w] + [Eww_a \times TUF_{ww}] + [Ec_a \times TUF_c]$

(c) $ME_{min} = [Em_n \times TUF_m] + [Eh_n \times TUF_h] + [Ew_n \times TUF_w] + [Eww_n \times TUF_{ww}] + [Ec_n \times TUF_c]$

Where:

Em_x, Em_a, and Em_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Extra Hot wash/Cold rinse cycle, as measured in sections 3.3.1 through 3.3.3 of this appendix.

Eh_x, Eh_a, and Eh_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Hot wash/Cold rinse cycle, as measured in sections 3.4.1 through 3.4.3 of this appendix.

Ew_x, Ew_a, and Ew_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Warm wash/Cold rinse cycle, as measured in sections 3.5.1 through 3.5.3 of this appendix.

Eww_x, Eww_a, and Eww_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Warm wash/Warm rinse cycle, as measured in sections 3.6.1 through 3.6.3 of this appendix.

Ec_x, Ec_a, and Ec_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the Cold wash/Cold rinse cycle, as measured in sections 3.7.1 through 3.7.3 of this appendix.

TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.1.5 *Total weighted per-cycle machine electrical energy consumption.* Calculate the total weighted per-cycle machine electrical energy consumption, ME_T, expressed in kilowatt-hours per cycle and defined as:

$ME_T = [ME_{max} \times F_{max}] + [ME_{avg} \times F_{avg}] + [ME_{min} \times F_{min}]$

Where:

ME_{max}, ME_{avg}, and ME_{min} are defined in section 4.1.4 of this appendix.

F_{max}, F_{avg}, and F_{min} are defined in Table 4.1.3 of this appendix.

4.1.6 *Total per-cycle energy consumption when electrically heated water is used.* Calculate the total per-cycle energy consumption, E_{TE}, using electrically heated water, expressed in kilowatt-hours per cycle and defined as:

$E_{TE} = H_{ET} + M_{ET}$

Where:

M_{ET} = As defined in section 4.1.5 of this appendix.

H_{ET} = As defined in section 4.1.3 of this appendix.

4.2 Water consumption of clothes washers.

4.2.1 *Per-cycle water consumption for Extra Hot wash/Cold rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Extra Hot wash/Cold rinse cycle and defined as:

$Qm_{max} = [Hm_x + Cm_x]$

$Qm_{avg} = [Hm_a + Cm_a]$

$Qm_{min} = [Hm_n + Cm_n]$

Where:

Hm_x, Cm_x, Hm_a, Cm_a, Hm_n, and Cm_n are defined in section 3.3 of this appendix.

4.2.2 *Per-cycle water consumption for Hot wash/Cold rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Hot wash/Cold rinse cycle and defined as:

$Qh_{max} = [Hh_x + Ch_x]$

$Qh_{avg} = [Hh_a + Ch_a]$

$Qh_{min} = [Hh_n + Ch_n]$

Where:

Hh_x, Ch_x, Hh_a, Ch_a, Hh_n, and Ch_n are defined in section 3.4 of this appendix.

4.2.3 *Per-cycle water consumption for Warm wash/Cold rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Warm wash/Cold rinse cycle and defined as:

$Qw_{max} = [Hw_x + Cw_x]$

$Qw_{avg} = [Hw_a + Cw_a]$

$Qw_{min} = [Hw_n + Cw_n]$

Where:

Hw_x, Cw_x, Hw_a, Cw_a, Hw_n, and Cw_n are defined in section 3.5 of this appendix.

4.2.4 *Per-cycle water consumption for Warm wash/Warm rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Warm wash/Warm rinse cycle and defined as:

$Qww_{max} = [Hww_x + Cww_x]$
$Qww_{avg} = [Hww_a + Cww_a]$
$Qww_{min} = [Hww_n + Cww_n]$

Where:

Hww_x, Cww_x, Hww_a, Cww_a, Hww_n, and Cww_n are defined in section 3.7 of this appendix.

4.2.5 *Per-cycle water consumption for Cold wash/Cold rinse.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the Cold wash/Cold rinse cycle and defined as:

$Qc_{max} = [Hc_x + Cc_x]$
$Qc_{avg} = [Hc_a + Cc_a]$
$Qc_{min} = [Hc_n + Cc_n]$

Where:

Hc_x, Cc_x, Hc_a, Cc_a, Hc_n, and Cc_n are defined in section 3.6 of this appendix.

4.2.6 *Total weighted per-cycle water consumption for Extra Hot wash/Cold rinse.* Calculate the total weighted per-cycle water consumption for the Extra Hot wash/Cold rinse cycle, Qm_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qm_T = [Qm_{max} \times F_{max}] + [Qm_{avg} \times F_{avg}] + [Qm_{min} \times F_{min}]$

Where:

Qm_{max}, Qm_{avg}, Qm_{min} are defined in section 4.2.1 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.7 *Total weighted per-cycle water consumption for Hot wash/Cold rinse.* Calculate the total weighted per-cycle water consumption for the Hot wash/Cold rinse cycle, Qh_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qh_T = [Qh_{max} \times F_{max}] + [Qh_{avg} \times F_{avg}] + [Qh_{min} \times F_{min}]$

Where:

Qh_{max}, Qh_{avg}, Qh_{min} are defined in section 4.2.2 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.8 *Total weighted per-cycle water consumption for Warm wash/Cold rinse.* Calculate the total weighted per-cycle water consumption for the Warm wash/Cold rinse cycle, Qw_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qw_T = [Qw_{max} \times F_{max}] + [Qw_{avg} \times F_{avg}] + [Qw_{min} \times F_{min}]$

Where:

Qw_{max}, Qw_{avg}, Qw_{min} are defined in section 4.2.3 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.9 *Total weighted per-cycle water consumption for Warm wash/Warm rinse.* Calculate the total weighted per-cycle water consumption for the Warm wash/Warm rinse cycle, Qww_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qww_T = [Qww_{max} \times F_{max}] + [Qww_{avg} \times F_{avg}] + [Qww_{min} \times F_{min}]$

Where:

Qww_{max}, Qww_{avg}, Qww_{min} are defined in section 4.2.4 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.10 *Total weighted per-cycle water consumption for Cold wash/Cold rinse.* Calculate the total weighted per-cycle water consumption for the Cold wash/Cold rinse cycle, Qc_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Qc_T = [Qc_{max} \times F_{max}] + [Qc_{avg} \times F_{avg}] + [Qc_{min} \times F_{min}]$

Where:

Qc_{max}, Qc_{avg}, Qc_{min} are defined in section 4.2.5 of this appendix.

F_{max}, F_{avg}, F_{min} are defined in Table 4.1.3 of this appendix.

4.2.11 *Total weighted per-cycle water consumption for all wash cycles.* Calculate the total weighted per-cycle water consumption for all wash cycles, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Q_T = [Qm_T \times TUF_m] + [Qh_T \times TUF_h] + [Qw_T \times TUF_w] + [Qww_T \times TUF_{ww}] + [Qc_T \times TUF_c]$

Where:

Qm_T, Qh_T, Qw_T, Qww_T, and Qc_T are defined in sections 4.2.6 through 4.2.10 of this appendix.

TUF_m, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.2.12 *Water factor.* Calculate the water factor, WF, expressed in gallons per cycle per cubic foot (or liters per cycle per liter), as:

$WF = Qc_T/C$

Where:

Qc_T = As defined in section 4.2.10 of this appendix.

C = As defined in section 3.1.6 of this appendix.

4.2.13 *Integrated water factor.* Calculate the integrated water factor, IWF, expressed in gallons per cycle per cubic foot (or liter per cycle per liter), as:

$IWF = Q_T/C$

Where:

Q_T = As defined in section 4.2.11 of this Appendix.

C = As defined in section 3.1.6 of this appendix.

4.3 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the remaining moisture of the test load, D_E, expressed in kilowatt-hours per cycle and defined as:

$D_E = [(F_{max} \times \text{Maximum test load weight}) + (F_{avg} \times \text{Average test load weight}) + (F_{min} \times \text{Minimum test load weight})] \times (RMC_{corr} - 4\%) \times (DEF) \times (DUF)$

Where:

F_{max}, F_{avg}, and F_{min} are defined in Table 4.1.3 of this appendix

Maximum, average, and minimum test load weights are defined in Table 5.1 of this appendix.

RMC_{corr} = As defined in section 3.8.2.6, 3.8.3.5, or 3.8.4.1 of this Appendix.

DEF = Nominal energy required for a clothes dryer to remove moisture from clothes = 0.5 kWh/lb (1.1 kWh/kg).

DUF = Dryer usage factor, percentage of washer loads dried in a clothes dryer = 0.91.

4.4 *Per-cycle combined low-power mode energy consumption.* Calculate the per-cycle combined low-power mode energy consumption, E_{TLP}, expressed in kilowatt-hours per cycle and defined as:

$E_{TLP} = [(P_{ia} \times S_{ia}) + (P_o \times S_o)] \times K_p/295$

Where:

P_{ia} = Washer inactive mode power, in watts, as defined in section 3.9.1 of this appendix for clothes washers capable of operating in inactive mode; otherwise, $P_{ia} = 0$.

P_o = Washer off mode power, in watts, as defined in section 3.9.2 of this appendix for clothes washers capable of operating in off mode; otherwise, $P_o = 0$.

S_{ia} = Annual hours in inactive mode, defined as S_{oi} if no off mode is possible; $[S_{oi}/2]$ if both inactive mode and off mode are possible; and 0 if no inactive mode is possible.

S_o = Annual hours in off mode, defined as S_{oi} if no inactive mode is possible; $[S_{oi}/2]$ if both inactive mode and off mode are possible; and 0 if no off mode is possible.

S_{oi} = Combined annual hours for off and inactive mode = 8,465.

K_p = Conversion factor of watt-hours to kilowatt-hours = 0.001.

295 = Representative average number of clothes washer cycles in a year.

4.5 *Modified energy factor.* Calculate the modified energy factor, MEF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$MEF = C/(E_{TE} + D_E)$

Where:

C = As defined in section 3.1.6 of this appendix.

E_{TE} = As defined in section 4.1.6 of this appendix.

D_E = As defined in section 4.3 of this appendix.

4.6 *Integrated modified energy factor.* Calculate the integrated modified energy factor, IMEF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$IMEF = C/(E_{TE} + D_E + E_{TLP})$

Where:

C = As defined in section 3.1.6 of this appendix.

E_{TE} = As defined in section 4.1.6 of this appendix.

D_E = As defined in section 4.3 of this appendix.

E_{TLP} = As defined in section 4.4 of this appendix.

5. Test Loads

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥ <	≥ <						
0.00–0.80	0.00–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.85	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.05	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.65	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights is ±0.10 lbs (0.05 kg).

6. Waivers and Field Testing

6.1 *Waivers and Field Testing for Nonconventional Clothes Washers.* Manufacturers of nonconventional clothes washers, such as clothes washers with adaptive control systems, must submit a petition for waiver pursuant to 10 CFR 430.27 to establish an acceptable test procedure for that clothes washer if the washer cannot be tested pursuant to the DOE test procedure or the DOE test procedure yields results that are so unrepresentative of the clothes washer's true energy consumption characteristics as to provide materially inaccurate comparative data. In such cases, field testing may be appropriate for establishing an acceptable test procedure. The following are guidelines for field testing that may be used by manufacturers in support of petitions for waiver. These guidelines are not mandatory and the Department may determine that they do not apply to a particular model. Depending upon a manufacturer's approach for conducting field testing, additional data may be required. Manufacturers are encouraged to communicate with the Department prior to the commencement of field tests that may be used to support a petition for waiver. Section 6.3 of this appendix provides an example of

field testing for a clothes washer with an adaptive water fill control system. Other features, such as the use of various spin speed selections, could be the subject of field tests.

6.2 *Nonconventional Wash System Energy Consumption Test.* The field test may consist of a minimum of 10 of the nonconventional clothes washers (''test clothes washers'') and 10 clothes washers already being distributed in commerce (''base clothes washers''). The tests should include a minimum of 50 wash cycles per clothes washer. The test clothes washers and base clothes washers should be identical in construction except for the controls or systems being tested. Equal numbers of both the test clothes washer and the base clothes washer should be tested simultaneously in comparable settings to minimize seasonal or end-user laundering conditions or variations. The clothes washers should be monitored in such a way as to accurately record the average total energy and water consumption per cycle, including water heating energy when electrically heated water is used, and the energy required to remove the remaining moisture of the test load. Standby and off mode energy consumption should be measured according to section 4.4 of this test procedure. The field test results should be used to determine the best method to correlate the rating of the test clothes washer to the rating of the base clothes washer.

6.3 *Adaptive water fill control system field test.* (1) Section 3.2.6.3 of this appendix defines the test method for measuring energy consumption for clothes washers that incorporate both adaptive (automatic) and alternate manual water fill control systems. Energy consumption calculated by the method defined in section 3.2.6.3 of this appendix assumes the adaptive cycle will be used 50 percent of the time. This section can be used to develop field test data in support of a petition for waiver when it is believed that the adaptive cycle will be used more than 50 percent of the time. The field test sample size should be a minimum of 10 test clothes washers. The test clothes washers should be representative of the design, construction, and control system that will be placed in commerce. The duration of field testing in the user's house should be a minimum of 50 wash cycles, for each unit. No special instructions as to cycle selection or product usage should be given to the field test participants, other than inclusion of the product literature pack that would be shipped with all units, and instructions regarding filling out data collection forms, use of data collection equipment, or basic procedural methods. Prior to the test clothes washers being installed in the field test locations, baseline data should be developed for all field test units by conducting laboratory tests as defined by section 1 through section 5 of this appendix to determine the energy consumption, water consumption, and remaining moisture content values. The following data should be measured and recorded for each wash load during the test period: wash cycle selected, the mode of the clothes washer (adaptive or manual), clothes load dry weight (measured after the clothes washer and clothes dryer cycles are completed) in pounds, and type of articles in the clothes load (*e.g.,* cottons, linens, permanent press). The wash cycles used in calculating the in-home percentage split between adaptive and manual cycle usage should be only those wash cycles that conform to the definition of the energy test cycle.

Calculate:

T = The total number of wash cycles run during the field test.

T_a = The total number of adaptive control wash cycles.

T_m = The total number of manual control wash cycles.

The percentage weighting factors:

$P_a = (T_a/T) \times 100\%$ (the percentage weighting for adaptive control selection)

$P_m = (T_m/T) \times 100\%$ (the percentage weighting for manual control selection)

(2) Energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T) values calculated in section 4 of this appendix for the manual and adaptive modes should be combined using P_a and P_m as the weighting factors.

■ 8. Add a new Appendix J3 to subpart B of part 430 to read as follows:

Appendix J3 to Subpart B of Part 430–Uniform Test Method for Measuring the Moisture Absorption and Retention Characteristics of New Energy Test Cloth Lots

Note: DOE maintains an historical record of the standard extractor test data and final correctio5tn curve coefficients for each approved lot of energy test cloth. These can be accessed through DOE's Web page for standards and test procedures for residential clothes washers at DOE's Building Technologies Office Appliance and Equipment Standards Web site.

1. Objective

The following procedure is used to evaluate the moisture absorption and retention characteristics of a new lot of test cloth by measuring the remaining moisture content (RMC) in a standard extractor at a specified set of conditions. The results are used to develop a set of coefficients that correlate the measured RMC values of the new test cloth lot with a set of standard RMC values established as an historical reference point. These correction coefficients are applied to the RMC measurements performed during testing according to appendix J1 or appendix J2 to 10 CFR 430 subpart B, ensuring that the final corrected RMC measurement for a clothes washer remains independent of the test cloth lot used for testing.

2. Definitions

2.1 *AHAM* means the Association of Home Appliance Manufacturers.

2.2 *Bone-dry* means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

2.3 *Lot* means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

3. Testing Conditions

3.1 Table 3.1 of this appendix provides the matrix of test conditions. In the table, ''g Force'' represents units of gravitational acceleration. When this matrix is repeated 3 times, a total of 60 extractor RMC test runs are required. For the purpose of the extractor RMC test, the test cloths may be used for up to 60 test runs (after preconditioning as specified in appendix J1 or appendix J2).

TABLE 3.1—MATRIX OF EXTRACTOR RMC TEST CONDITIONS

''g Force''	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
100				
200				
350				
500				
650				

3.2 Perform the standard extractor RMC tests using a North Star Engineered Products Inc. (formerly Bock) Model 215 extractor (having a basket diameter of 20 inches, height of 11.5 inches, and volume of 2.09 ft^3), with a variable speed drive (North Star Engineered Products, P.O. Box 5127, Toledo, OH 43611) or an equivalent extractor with same basket design (*i.e.* diameter, height, volume, and hole configuration) and variable speed drive. Table 3.2 shows the extractor spin speed, in revolutions per minute (RPM), that must be used to attain each required g-force level.

TABLE 3.2—EXTRACTOR SPIN SPEEDS FOR EACH TEST CONDITION

"g Force"	RPM
100	594 ± 1
200	840 ± 1
350	1111 ± 1
500	1328 ± 1
650	1514 ± 1

3.3 *Bone dryer temperature.* The dryer used for bone drying must heat the test cloth and energy stuffer cloths above 210 °F (99 °C).

4. Test Loads

4.1 *Preconditioning.* New test cloths, including energy test cloths and energy stuffer cloths, must be pre-conditioned in a clothes washer in the following manner:

Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per pound of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135 °F ±5 °F (57.2 °C ±2.8 °C) and the rinse temperature is to be controlled to 60 °F ±5 °F (15.6 °C ±2.8 °C). Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (for a total of five complete wash-rinse-spin cycles).

4.2 *Test load composition.* Test loads must be comprised of randomly selected cloth at the beginning, middle and end of a lot.

4.3 *Test load size.* Use a test load size of 8.4 lbs. Two test loads may be used for standard extractor RMC tests, with each load used for half of the total number of required tests.

5. Test Measurements

5.1 Dry the test cloth until it is ''bone-dry'' according to the definition in section 2.2 of this appendix. Record the bone-dry weight of the test load (WI).

5.2 Prepare the test load for soak by grouping four test cloths into loose bundles. Create the bundles by hanging four cloths vertically from one corner and loosely wrapping the test cloth onto itself to form the bundle. Bundles should be wrapped loosely to ensure consistency of water extraction. Then place the bundles into the water to soak. Eight to nine bundles will be formed depending on the test load. The ninth bundle may not equal four cloths but can incorporate energy stuffer cloths to help offset the size difference.

5.3 Soak the test load for 20 minutes in 10 gallons of soft (<17 ppm) water. The entire test load must be submerged. Maintain a water temperature of 100 °F ± 5 °F (37.8 °C ± 2.8 °C) at all times between the start and end of the soak.

5.4 Remove the test load and allow each of the test cloth bundles to drain over the water bath for a maximum of 5 seconds.

5.5 Manually place the test cloth bundles in the basket of the extractor, distributing them evenly by eye. The draining and loading process must take no longer than 1 minute. Spin the load at a fixed speed corresponding to the intended centripetal acceleration level (measured in units of the acceleration of gravity, g) ± 1g for the intended time period ± 5 seconds. Begin the timer when the extractor meets the required spin speed for each test.

5.6 Record the weight of the test load immediately after the completion of the extractor spin cycle (WC).

5.7 Calculate the remaining moisture content of the test load as (WC–WI)/WI.

5.8 Draining the soak tub is not necessary if the water bath is corrected for water level and temperature before the next extraction.

5.9 Drying the test load in between extraction runs is not necessary. However, the bone dry weight must be checked after every 12 extraction runs to make sure the bone dry weight is within tolerance (8.4 ± 0.1 lb).

5.10 The test load must be soaked and extracted once following bone drying, before continuing with the remaining extraction runs. Perform this extraction at the same spin speed used for the extraction run prior to bone drying, for a time period of 4 minutes. Either warm or cold soak temperature may be used.

5.11 Measure the remaining moisture content of the test load at five g levels: 100 g, 200 g, 350 g, 500 g, and 650 g, using two different spin times at each g level: 4 minutes and 15 minutes.

5.12 Repeat sections 5.1 through 5.11 of this appendix using soft (<17 ppm) water at 60 °F ± 5 °F (15.6 °C ± 2.8 °C).

6. Calculation of RMC Correction Curve

6.1 Average the values of 3 test runs, and fill in Table 3.1 of this appendix. Perform a linear least-squares fit to determine coefficients A and B such that the standard RMC values shown in Table 6.1 of this appendix ($RMC_{standard}$) are linearly related to the RMC values measured in section 5 of this appendix (RMC_{cloth}):

$RMC_{standard} \sim A * RMC_{cloth} + B$

Where A and B are coefficients of the linear least-squares fit.

TABLE 6.1—STANDARD RMC VALUES ($RMC_{standard}$)

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin (percent)	4 min. spin (percent)	15 min. spin (percent)	4 min. spin (percent)
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0
650	23.0	26.4	24.1	28.0

6.2 Perform an analysis of variance with replication test using two factors, spin speed and lot, to check the interaction of speed and lot. Use the values from Table 3.1 and Table 6.1 of this appendix in the calculation. The ''P'' value of the F-statistic for interaction between spin speed and lot in the variance analysis must be greater than or equal to 0.1. If the ''P'' value is less than 0.1, the test cloth is unacceptable. ''P'' is a theoretically based measure of interaction based on an analysis of variance.

7. Application of the RMC Correction Curve

7.1 Using the coefficients A and B calculated in section 6.1 of this appendix:

$RMC_{corr} = A \times RMC + B$

7.2 Apply this RMC correction curve to measured RMC values in appendix J1 and appendix J2.

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Part III

Library of Congress

Copyright Royalty Board

37 CFR Part 380

Determination of Royalty Rates for Digital Performance Right in Sound Recordings and Ephemeral Recordings; Final Rule

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2009–1 CRB Webcasting III]

Determination of Royalty Rates for Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Copyright Royalty Judges announce their final determination of the rates and terms for two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, for the period beginning on January 1, 2011, and ending on December 31, 2015.

DATES: *Effective Date:* April 25, 2014.

Applicability Dates: These rates and terms are applicable to the period January 1, 2011, through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–7658. Email: *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On July 6, 2012, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded this matter for determination. The Copyright Royalty Judges (Judges) determine that the royalty rates payable under 17 U.S.C. 114(f) for the public performance by webcasters of digital sound recordings for the period 2011 through 2015 shall be as follows. For commercial webcasters subject to the agreement between the National Association of Broadcasters and SoundExchange, as stipulated in the agreement. For all other commercial webcasters:

Year	Rate per-performance [1]
2011	$0.0019
2012	0.0021
2013	0.0021
2014	0.0023
2015	0.0023

The Judges determine that section 114 public performance rates for noncommercial webcasters shall be as follows. For noncommercial educational webcasters, as agreed by and between College Broadcasters, Inc. and SoundExchange in the agreement approved by the Judges in this proceeding. For other noncommercial webcasters, the rate shall be $500 per station or channel, including side channels, up to a maximum usage of 159,140 Aggregate Tuning Hours [2] (ATH) per month. Commercial usage rates apply to usage in excess of 159,140 hours per month.

All parties in interest in this proceeding agreed that royalties payable for the license granted under 17 U.S.C. 112(e) should be bundled with the section 114 royalties and deemed to be 5% of the bundled remittances. The Judges adopt this agreement for the period 2011 through 2015.

Following are the bases of the Judges' determination.

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VII. Determination and Order

I. Introduction

A. Subject of the Proceeding

This Determination results from a rate proceeding convened under section 803(b) of the Copyright Act (Act), 17 U.S.C. 803(b). On January 5, 2009, the Copyright Royalty Judges (Judges) announced commencement of the captioned proceeding. *See,* 74 FR 318 (Jan. 5, 2009). The purpose of the proceeding was to determine royalty rates and terms for the public performance of digital sound recordings by eligible nonsubscription transmission services or new subscription services, as defined in section 114 of the Act.[3] This proceeding includes determination of rates and terms relating to the making of ephemeral copies under section 112 of the Act in furtherance of the digital public performances. The rates and terms the Judges determine in this proceeding apply to the period of January 1, 2011, through December 31, 2015. *See* 17 U.S.C. 804(b)(3)(A).

B. Procedural Posture

In response to the Judges' published notice of commencement, forty entities filed Petitions to Participate. The participants followed the statutory procedures for rates and terms determinations, which include a voluntary negotiation period. In addition, Congress provided expanded opportunities for settlement by passing the Webcaster Settlement Acts of 2008 and 2009 (WSA).[4] Most participants negotiated agreements relating to rates and terms prior to the hearing.[5]

When the Judges convened the hearing to determine rates and terms applicable to the non-settling participants, the parties remaining were: SoundExchange, Inc. (SoundExchange),

[1] This rate is applicable from first performance, but subject to recoupment credit for the agreed minimum fee of $500 per year for each station or channel.

[2] ''Aggregate Tuning Hours'' is defined in SoundExchange's rate proposal as using the same definition employed during the 2006–2010 rate period and codified at 37 CFR 380.2 (2010). It is a measure of the duration of all programming transmitted by licensee, less the actual running time of any sound recordings that are licensed directly or which do not require a license under the Act.

[3] Including as amended by the Digital Millennium Copyright Act (DMCA), Public Law 105–304, 112 Stat. 2860, 2887 (Oct. 27, 1998).

[4] Public Law 110–435, 122 Stat. 4974 (Oct. 16, 2008); Public Law 111–36, 123 Stat. 1926 (June 30, 2009). The Webcaster Settlement Acts of 2008 and 2009 authorized webcasters to negotiate rates and terms for the section 112 and 114 licenses to be effective during the then current rate term *in lieu* of the adjudicated rates for that term, and to extend through the rate term at issue in this proceeding. The WSAs also gave parties the option to exclude those negotiated terms from evidence in a proceeding before the Judges notwithstanding the provisions of sections 112(e)(4) and 114(f)(2)(B), which permit the Judges to consider evidence of voluntarily negotiated licenses in determining statutory rates and terms.

[5] The participants reached eight settlements in all, accounting for approximately 95% of the royalties paid to SoundExchange in 2008 and 2009. The Copyright Office published notices of settlements as follows: 74 FR 9293 (Mar. 3, 2009) (three agreements); 74 FR 34796 (July 17, 2009) (one agreement); and 74 FR 40614 (Aug. 12, 2009) (four agreements).

College Broadcasters, Inc. (CBI),[6] the Intercollegiate Broadcasting System, Inc. (IBS), Live365, Inc. (Live365), RealNetworks, Inc., and Royalty Logic, LLC. The Judges heard evidence for seven days in April 2010 in the direct case and three days in July 2010 in the rebuttal case. On May 5, 2010, the Judges heard oral argument relating to the settlement and resulting regulatory language proposed jointly by SoundExchange and CBI. The Judges heard closing arguments of counsel on July 30, 2010.

Following presentation of written and testimonial evidence, legal briefing, and argument of counsel, the Judges published their Final Determination in this matter on March 9, 2011. *See* 76 FR 13026 (Mar. 9, 2011). IBS filed a timely appeal to the United States Court of Appeals for the DC Circuit. IBS asserted on appeal that the $500 minimum fee and the attendant recordkeeping and reporting requirements established for noncommercial webcasters is excessive and burdensome for small college broadcasters. IBS further challenged the Constitutionality of the statutory construct granting the DC Circuit the power not just to affirm, reverse, or remand appeals from the CRB, but also to remediate CRB determinations—an ability IBS challenged as a non-judicial function and unconstitutional under Article III of the Constitution. IBS likewise challenged the constitutionality of the Judges under the Appointments Clause of the United States Constitution. U.S. Const., art. II, sec. 2, cl.2.[7]

SoundExchange and CBI intervened in the appeal. Both intervenors filed briefs in support of the Judges' determination. SoundExchange controverted the constitutional challenges asserted by IBS. CBI sought to assure the validity of its agreement with SoundExchange regardless of the resolution of the constitutional issues.

On July 6, 2012, the DC Circuit ruled that the Judges were acting as principal officers of the United States government in violation of the Appointments Clause of the Constitution. *Intercollegiate Broadcasting Sys., Inc.* v. *Copyright Royalty Board,* 684 F.3d 1332, 1342 (D.C. Cir. 2012), *cert. denied,* 133 S. Ct. 2735 (2013).[8] To cure the violation of the Appointments Clause, the DC Circuit excised that portion of the Act that limited the Librarian's ability to remove Judges. Having determined that the Judges were not validly appointed at the time they issued the challenged determination, the DC Circuit ''vacate[d] and remand[ed] the determination,'' without addressing any substantive issue on appeal, so that a constitutionally appointed panel of Judges could render a new determination. *Id.* at 1334, 1342.

Following the Supreme Court's denial of IBS's petition for a writ of *certiorari,* the Judges requested proposals from the participants on the conduct of proceedings on remand. *Order for Further Briefing* (July 26, 2013). SoundExchange essentially argued for a summary reissuance of the Judges' original determination and CBI argued for summary adoption of its settlement with SoundExchange. IBS urged the Judges to reopen the proceeding to allow additional written and oral testimony and new briefing. IBS argued in the alternative that the Judges permit each participant to submit new briefs.

The substantive issues on appeal were (i) the $500 minimum fee for noncommercial educational webcasters and (ii) terms proposed by IBS relating to ''small'' and ''very small'' noncommercial webcasters. The language of the DC Circuit's remand, however, was not limited to any specific portion of the determination. Rather, the DC Circuit ''vacate[d] and remand[ed] *the determination.''* *Id.* at 1342 (emphasis added). The Judges interpret the Court's remand order as directing the Judges to review the entire record and to issue a new determination on all issues included therein, not just the $500 minimum fee that was the subject of the appeal.

The Judges have considered both the language of the remand order and proposals from the participants regarding remand procedure. While the DC Circuit's remand instructions compel the Judges to consider anew all issues in the original determination, the Judges decline to reopen the proceeding and accept additional evidence or argument. Each party had ample opportunity to present its case.[9] The Judges have concluded that this matter shall be determined based upon a *de novo* review of the substantial record that the parties developed during the proceeding leading to the first determination.

Upon completion of their *de novo* review of the existing record, the Judges issued their initial *Determination After Remand for Royalty Rates and Terms for 2011–2015,* Docket No. 2009–1 CRB Webcasting III (Jan. 9, 2014) (*Initial Determination*). Pursuant to 17 U.S.C. 803(c)(2) and 37 CFR Part 353, IBS filed a motion for rehearing. After reviewing the motion, the Judges denied the motion for rehearing. *Order Denying Motion for Rehearing,* Docket No. 2009–1 CRB Webcasting III (Feb. 4, 2014). As explained in the February 4, 2014 Order, the Judges determined that IBS had failed to show that any part of the *Initial Determination* was erroneous, *i.e.,* IBS's arguments did not satisfy the ''exceptional case'' standard necessary to warrant a rehearing. More particularly, the motion failed to establish: (1) An intervening change in controlling law, (2) the availability of new evidence, or (3) a need to correct a clear error or prevent manifest injustice. *Id.*

C. Statutory Background

Transmission of a sound recording constitutes a public performance of that work. Owners of copyright in sound recordings are not accorded an exclusive, general public performance right with regard to those recordings. *See* 17 U.S.C. 106(4). Owners of copyright in ''musical works,''[10] have an exclusive right of public performance of those works; owners of copyright in ''sound recordings''[11] do not. As a

[6] In August 2009, under the auspices of the WSA of 2009, CBI and SoundExchange reached a settlement between them (CBI/SoundExchange Agreement) covering rates and terms for certain college broadcasters and noncommercial educational webcasters. The Copyright Office published notice of this settlement on August 12, 2009. *See* 74 FR 40616 (Aug. 12, 2009). CBI and SoundExchange then filed a joint motion for approval of their settlement and adoption of its terms as the applicable regulations for all noncommercial educational webcasters. The Judges published proposed regulations based upon the CBI/SoundExchange agreed rates and terms. *See* 75 FR 16377 (Apr. 1, 2010). The Judges received multiple comments in favor of the proposed regulations and an objection from IBS. The Judges, therefore, heard oral argument of counsel in May 2010, and published the Final Rule relating to the CBI/SoundExchange Agreement and the NAB/SoundExchange Agreement. *See* 76 FR 13026 (Mar. 9, 2011).

[7] IBS argued that the Judges were principal officers of the United States government and, as such, must be appointed by the President with the advice and consent of the United States Senate. IBS also opined that the Librarian is not an agency head authorized to appoint inferior officers of the government, notwithstanding that the Librarian is appointed by the President and confirmed by the Senate.

[8] To remedy the violation of the Appointments Clause, the Librarian appointed the incumbent panel as at-will employees. The Librarian appointed the current panel of Judges while the IBS appeal was pending; consequently, the panel of Judges making the determination on remand is not the same as the panel that made the first determination.

[9] The Judges' consideration of this issue is discussed in detail in *Notice of Intention to Conduct Paper Proceeding on Remand and Solicitation of Comments from the Parties* (Sept. 17, 2013).

[10] A ''musical work'' is a musical composition, together with any accompanying words, that has been fixed in any tangible medium of expression. *See* 17 U.S.C. 102(a)(2).

[11] '' 'Sound recordings' are works that result from the fixation of a series of musical, spoken, or other

Continued

consequence, U.S. copyright law permits many public performances of sound recordings—including radio broadcasts—to take place without the authorization of, or compensation to, sound recording copyright owners (*e.g.,* performers and record labels).

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act (DPRA),[12] which created and granted to sound recording copyright owners a new exclusive right to perform a sound recording publicly by means of a digital audio transmission. 17 U.S.C. 106(6). The new right was, however, subject to a number of important limitations, including the grant to subscription digital audio transmission services (including satellite digital audio radio services) of a statutory license that permitted them to use sound recordings without the agreement of the copyright owner. 17 U.S.C. 114(d)(2), (f) (1997) (amended 1998).

Technology proceeded apace and, within a few short years, digital transmissions of sound recordings over the Internet were prevalent and available from both subscription and nonsubscription services. Congress did not specifically contemplate these ''webcaster'' services when it drafted the DPRA. Consequently, Congress expanded the statutory license in section 114 to cover ''eligible nonsubscription transmissions,'' *i.e.,* webcasting, when it enacted the Digital Millennium Copyright Act of 1998, Public. Law 105–304, 112 Stat. 2860 (Oct. 28, 1998),

> To ensure that recording artists and record companies will be protected as new technologies affect the ways in which their creative works are used; and . . . to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services. . . .

H.R. Rep. No. 105–796, at 79–80 (1998).

In addition, in recognition of the fact that webcasters must make temporary copies of sound recordings in order to facilitate the transmission process, Congress created a compulsory licensing scheme for so-called ''ephemeral'' recordings. *See id.* at 89–90. Licensees are limited to no more than one ephemeral recording (unless the terms of the license permit more) for use in the broadcasting or transmission of the copied work. 17 U.S.C. 112(e). The ephemeral recording must be transitory in nature, unless the licensee retains it solely for archival purposes. *See* 17 U.S.C. 112(a).

In the Copyright Royalty and Distribution Reform Act of 2004,[13] Congress created the role of Copyright Royalty Judge and authorized the Judges, *inter alia,* to determine and set rates and terms for the licensing and use of copyrighted works in several contexts, *e.g.,* cable television transmission, satellite radio broadcast, and, the medium relevant to this proceeding, webcasting. Congress retained the prior statutory standards and made them applicable to the Judges for determining rates and terms for both the ephemeral and the public performance licenses. For webcasting rates under either license, the ''Judges shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.'' 17 U.S.C. 114(f)(2)(B). The quoted language is substantially identical to the statutory language regarding ephemeral recordings. *See* 17 U.S.C. 112(e)(4).

To ascertain rates that represent this hypothetical market under both statutory sections, the Judges shall consider ''economic, competitive, and programming information presented by the parties. . . .'' *Id.* The Judges are not limited with regard to the evidence they may consider (other than the limitations in the WSAs on the use of agreements reached under those statutes). The Judges' determination relating to both licenses should also account for whether the use at issue might substitute for, promote, or otherwise affect the copyright owners' stream of revenues. The Judges must also consider, again for both licenses, the relative contributions of the owners and licensees in making the licensed work available to the public. *Id.* Except as directed by the WSAs, the Judges may consider rates and terms negotiated in voluntary licensing agreements for comparable transmission services. *Id.*

D. The Record

SoundExchange, Live365, IBS, and CBI presented evidence in this proceeding.[14] CBI only presented evidence to support adoption of its settlement with SoundExchange for noncommercial educational webcasting. SoundExchange and Live365 presented evidence relating to commercial webcasters. SoundExchange presented evidence relating to noncommercial webcasting; IBS presented evidence for small noncommercial webcasters. The Judges received written and live testimony from 15 witnesses[15] and admitted 60 documentary exhibits into evidence.

The record on which the Judges base this determination after remand is the existing record, including written and oral legal argument of counsel, and transcripts of the entire determination proceeding.[16]

II. Rates Under the Section 112 Ephemeral License

Between the direct and rebuttal phases of this proceeding, SoundExchange and Live365 presented settlements of (i) the minimum fee and royalty rates for the section 112 license and (ii) the minimum fee for the section 114 license applicable to the commercial webcasters not encompassed by the NAB/SoundExchange Agreement. These two settlements were included in one stipulation. The terms of the settlement are the same as the agreement reached and included as a final rule following the prior webcasting rate determination, following remand. *See Digital Performance Right in Sound Recordings and Ephemeral Recordings (Final rule),* 75 FR 6097 (Feb. 8, 2010).

The minimum fee for commercial webcasters is an annual, nonrefundable fee of $500 for each individual channel and each individual station (including any side channel), subject to an annual cap of $50,000. The royalty rate for the section 112 license is bundled with the fee for the section 114 license. There is one additional term in the stipulation that was not included in the prior determination. The royalty rate for the section 112 license is deemed to be 5% of the bundled royalties. No party objected to the stipulation. SoundExchange presented unopposed evidence to support the minimum fee for commercial webcasters and the bundled royalty rates. *See* SoundExchange Proposed Findings of Fact (SX PFF) at ¶¶ 459–468, 472. These agreed provisions are supported by the parties and the evidence.

There is no disagreement between SoundExchange and IBS as to the rates for the section 112 license for noncommercial webcasters. As it did for commercial webcasters, SoundExchange

sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.'' 17 U.S.C. 101.

[12] Public Law 104–39, 109 Stat. 336 (Nov. 1, 1995).

[13] Public Law 108–419, 118 Stat. 2341 (Nov. 30, 2004).

[14] After filing Written Direct Statements, RealNetworks, Inc. withdrew from the proceedings, and Royalty Logic, LLC, did not participate further.

[15] The Judges also considered designated written testimony.

[16] The original panel of judges heard approximately ten days of testimony and legal argument in aggregate, resulting in approximately 2,600 pages of transcripts.

proposed a bundled rate approach for both the section 112 and section 114 rights, allocating 5% of the entire bundled royalty as the section 112 royalty. SX PFF at ¶ 671. IBS endorsed the proposal. *Amplification of IBS' Restated Rate Proposal,* at 2. The testimony offered by SoundExchange supported this proposal and the Judges adopt it. *See, e.g.,* Ford WDT at 9–12, 14–15; 4/20/10 Tr. at 434 (Ford); 4/22/10 Tr. at 729–31 (McCrady); *Post-Hearing Responses to Judges' Questions by Michael D. Pelcovits,* at 5 (May 21, 2010).

The issues remaining for the Judges' determination are (i) rates and terms for commercial webcasters' section 114 licenses and (ii) the rates and terms—specifically, the minimum fee—for noncommercial webcasters' section 114 licenses.

III. Rate Structure Under the Section 114 Performance License

The Copyright Act clearly establishes the willing buyer/willing seller standard for the royalty rates at issue in this proceeding. *See* 17 U.S.C. 114(f)(2)(B). To establish the *level* of such rates, the Judges must first determine the *structure* of those rates, *i.e.,* the metric or metrics that willing buyers and sellers likely would have negotiated in the marketplace.

SoundExchange and Live365 proposed that royalties for the section 114 license be computed pursuant to a per-performance usage structure. SoundExchange acknowledged, however, that ''[t]he metrics by which most services pay'' are the ''percentage-of-revenue'' metric or the ''per-subscriber'' metric—both of which are not fixed rates,'' but rather are rates that increase the monetary payment ''as subscribers and revenue increase.'' SX Reply PFF ¶ 74. However, neither SoundExchange nor Live365 proposed an alternative to the per-performance rate structure.

SoundExchange's industry witness noted the ubiquity of rate structures based on revenues or subscribership. More particularly, W. Tucker McCrady, Associate Counsel, Digital Legal Affairs at Warner Music Group acknowledged that ''[i]n the U.S., WMG does not have a single agreement with an audio streaming service where the payment amount is based solely on a per-play rate, as is the case with the statutory license.'' *See* McCrady WDT at 10. As Mr. McCrady further explained, the per-play royalty fee is typically combined with a percentage-of-revenue royalty fee, so that a per-play floor is seen as sort of a minimum protection for the value of the music,'' whereas, beyond that minimum, ''a *revenue share* . . . allows us to share in the upside . . . .'' 4/22/10 Tr. at 658 (McCrady) (emphasis added).

Live365 introduced as an exhibit in this proceeding the prior written direct testimony of Dr. Pelcovits in the previous webcasting proceeding, *Digital Performance Right in Sound Recordings and Ephemeral Recordings, Final rule and order,* 72 FR 24084, 24090 (May 1, 2007), *aff'd in relevant part sub nom. Intercollegiate Broad. Sys.* v. *Copyright Royalty Bd.,* 574 F.3d 748 (D.C. Cir. 2009)(*Web II*), in which he testified:

- Through the percentage-of-revenue, the record companies ensure that they will receive a share of royalties in the benchmark interactive market that *properly compensates* them for their valuable copyrighted material,
- The business justification for the percentage-of-revenue structure is so compelling *it should be adopted as the rate structure for the statutory license,*
- Removing the percentage-of-revenue element would unravel the complex set of factors that affected the negotiations, and undoubtedly would change the underlying rates, and
- There is a good argument that the percentage-of-revenue rate applied in the interactive market should simply be adopted for the noninteractive market.

Live365 Tr. Ex. 5, at 28–30.

The parties to the instant proceeding declined to propose rates based explicitly upon the revenues of webcasters, apparently because they had concluded that the Judges would reject revenue-based rates.[17] The parties thus submitted no evidence as to any alternative rate structure premised explicitly on the percentage-of-revenue realized by webcasters.

Given the limitations of the record developed by the parties, the Judges defer to the parties' decision to eschew advocacy for such percentage-of-revenue based fees in this proceeding. 17 U.S.C. 114(f)(2)(B) (''In determining . . . rates and terms the Copyright Royalty Judges shall base their decision on . . . information presented by the parties . . . .''). Accordingly, the Judges consider the relative merits of the competing per-performance rates proposed by the two contending parties.

The Judges recognize, however, that as a practical and strategic matter, participants in these proceedings carefully consider prior rate proceedings as roadmaps to ascertain the structure of the rates they propose. Mindful of that fact, the Judges wish to emphasize that by deferring to the present parties' decision to propose only a per-performance rate structure, the Judges do not *per se* reject future consideration of rate structures predicated upon other measurements, such as a percentage of revenue realized by webcasters.[18]

IV. Rates for Commercial Webcasters

A. The National Association of Broadcasters/SoundExchange Agreement

Section 801(b)(7)(A) of the Act allows for the adoption of rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding,'' provided they are submitted to the Copyright Royalty Judges for approval. The Judges must adopt the settlement after affording all interested parties an opportunity to comment, unless a participant in the proceeding objects to it and the Judges determine that the settlement does not provide a reasonable basis for setting rates and terms.

On June 1, 2009, the National Association of Broadcasters (NAB) and SoundExchange filed a settlement of all issues between them in this proceeding, including proposed rates and terms (NAB/SoundExchange Agreement). Their settlement was one of several WSA agreements that the Copyright

[17] For example, SoundExchange expressly noted that in *Web II* both the webcasters and SoundExchange ''proposed rate structures that included revenue-based elements and usage-based elements [but t]he Judges . . . concluded that a per-performance usage fee structure was more appropriate for commercial webcasters, and rejected revenue-based proposals.'' SX PFF ¶ 36 (*quoting Web II,* 72 FR at 24089). Likewise, Dr. Pelcovits indicated that his choice of a rate structure was constrained by the fact that the Judges in *Web II* had ''rejected alternatives such as fees calculated as a percentage of the buyer's revenue. . . .'' Pelcovits WDT at 6. The Judges note, however, that the rejection of percentage-of-revenue rate structures in *Web II* was based on the evidentiary record in that proceeding and that *Web II* explicitly did not establish a *per se* rejection of such rate structures. *Web II,* 72 FR at 24090 (''[The] evidence in the record weighs in favor of a per-performance usage fee structure. . . .This does not mean that some revenue-based metric could not be successfully developed. . . .'').

[18] Of course, the Judges' adoption of any rate structure in a future proceeding would depend upon the evidence and arguments the participants present, including arguments addressing concerns raised by the Judges in earlier proceedings. *See, e.g., Web II,* 72 FR at 24089–90. The Judges' possible future consideration of a percentage-of-revenue rate structure in a section 114(f)(2)(B) proceeding for noninteractive webcasting does not suggest that such a structure or the resulting rates should necessarily be related in any manner to the structure or level of rates set (pursuant to section 801(b)(1) for preexisting services identified in section 114(f)(2)(B)). *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings, Final rule and order,* 67 FR 45240, 45244 (July 8, 2002)(*Web I*). Additionally, although rates might be set pursuant to the same structure under both statutory provisions, there is no reason why the level of rates would necessarily be the same.

Office published in the **Federal Register**. NAB and SoundExchange filed their WSA agreement in the instant proceeding and requested that the Judges adopt the agreed rates and terms for some services of commercial broadcasters for the period 2011 through 2015. The settlement applies to statutory webcasting activities of commercial terrestrial broadcasters, including digital simulcasts of analog broadcasts and separate digital programming. The settlement includes per-performance royalty rates, a minimum fee, and reporting requirements.

The Judges published the settlement (with minor modifications [19]) as proposed regulations in the **Federal Register** on April 1, 2010, and provided interested parties an opportunity to comment and object by April 22, 2010. 75 FR 16377 (Apr. 1, 2010) (publishing NAB/SoundExchange and CBI/SoundExchange Agreements). The Judges received no comments or objections; therefore, the provisions of section 801(b)(7)(A)(ii) (permitting the Judges to decline to adopt the settlement as a basis for statutory rates and terms) are inapplicable. In the absence of an objection from a party that would be bound by the proposed rates and terms, the Judges adopt the rates and terms in the settlement for certain digital transmissions of commercial broadcasters for the period of 2011–2015. 17 U.S.C. 801(b)(7)(A).

B. All Other Commercial Webcasters

Only two participants—SoundExchange and Live365—presented evidence relating to public performance royalty rates for commercial webcasters.

SoundExchange proposed that the section 114 royalty rates for noninteractive webcasting be established by applying two categories of benchmarks:

- Agreements between SoundExchange and: (a) The NAB; and (b) Sirius XM Satellite Radio (Sirius XM), both of which established per-performance royalty rates for the same noninteractive webcaster rights that are at issue in this proceeding; and
- Rates established in a different but purportedly analogous market—the market for *interactive* webcasting of digital sound recordings—adjusted to render them probative of the rates for noninteractive webcasting.

Relying on these proposed benchmarks, SoundExchange proposed the following royalty rate schedule:

Year	Rate per-performance
2011	$0.0021
2012	0.0023
2013	0.0025
2014	0.0027
2015	0.0029

SX PFF ¶ 11.

Live365 proposed that commercial webcasters pay $0.0009 per performance throughout the entire period 2011–2015. Live365 PFF ¶ 170. In addition, Live365 sought a 20% discount on its proposed per-performance rate for ''Internet radio aggregators,'' such as itself, to account for the alleged value to copyright owners of their provision of certain specified ''aggregation services.'' Live365 PFF ¶ 193.

Live365's proposed rate is not premised upon any benchmarks. Its economic expert, Dr. Mark Fratrik, stated that he was ''not aware of comparable, voluntary license agreements that would serve as an appropriate benchmark for an industry-wide rate.'' Fratrik Corrected and Amended WDT at 7 [hereinafter, Fratrik WDT].[20]

Rather, Live365 proposed a unique model by which:

- Revenues are estimated for a supposedly ''representative'' webcaster;
- All costs—except for the royalty fees to be determined—are estimated for a ''representative'' webcaster; and
- Royalty fees are established, on a per-performance basis, at a level which assures the ''representative'' webcaster a 20% operating margin, *i.e.,* a 20% profit.

1. The Live365 Rate Proposal

As discussed above, Live365 proposed a single constant rate of $0.0009 for each year of the 2011–2015 rate period. This proposed rate was supported by Dr. Fratrik's written and oral testimony.

With regard to the fundamentals of the hypothetical market, Dr. Fratrik first assumed, correctly, that the ''underlying product'' consisted of ''blanket licenses for each record company which allows use of that record company's complete repertoire of sound recordings.'' Fratrik WDT at 8. Next, he properly assumed that the rates must be those that would be negotiated between a willing buyer and a willing seller. Fratrik WDT at 4.

With regard to the market participants, Dr. Fratrik properly identified the hypothetical ''willing buyers'' to be the webcasting services that operated under the statutory license.'' *Id.* at 8. He also properly identified the ''hypothetical willing sellers'' as the several record companies. *Id.*

To determine the statutory rate, Dr. Fratrik attempted to determine the appropriate license rate based upon an examination of the ''revenue and cost structure of a mature webcaster—in this case, Live365.'' *Id.* at 4.

For assumed revenues, Dr. Fratrik utilized in his model ''publicly available industry data on webcasting revenues.'' *Id.* These revenue figures were not historical data, but rather ''estimates of revenues recognizing the changing marketplace.'' *Id.* at 10. More particularly, Dr. Fratrik relied upon ''[p]ublicly available industry reports from Accustream and ZenithOptimedia [to] serve as lower and upper bounds, respectively, on advertising revenue measurements for the past period.'' *Id.* at 16. Although webcaster revenue came from two sources, subscriptions and advertising, the only data available to Dr. Fratrik, and the only data he used, were advertising revenues. *Id.* at 16–17.

For assumed costs, Dr. Fratrik utilized the ''operating costs'' from Live365. *Id.* at 5. Given the mechanics of his model, the costs he included were ''all of the operating costs *except* for the royalty rates to be paid to the copyright owners.'' *Id.* (emphasis added). The royalty cost is omitted because it is the ''unknown'' that Dr. Fratrik's analysis is designed to determine. Dr. Fratrik chose to utilize the costs incurred by Live365 because, in his opinion, ''Live365 is a representative webcaster with respect to its operating costs . . . and will serve as a good conservative proxy for the industry as it is a mature operator.'' *Id.* at 16.

With regard to the difference between revenues and costs, *i.e.,* profits, Dr. Fratrik assumed that ''a Commercial webcaster is *entitled* to a reasonable profit margin.'' *Id.* at 17 (emphasis added). Accordingly, Dr. Fratrik

[19] Exercising the right granted in the WSAs, SoundExchange and NAB provided in their agreement that, unlike the rates and terms they set for the section 114 licenses, the rates and terms they set for the ephemeral recording license could not be used as evidence and would not serve as precedent in any contested rate determination. The Judges, deeming such language inappropriate to the purposes of the regulations, declined to include it in the published regulations. For the same reason, the Judges declined to accept language in the agreement regarding SoundExchange's acceptance of a broadcaster's election to be a ''Small Broadcaster'' or the broadcaster's reservation of rights. The Judges also declined on the same basis to include some of the language of the CBI agreement.

[20] Throughout this determination, the Judges will employ abbreviations that they have used in past determinations, *e.g.,* ''WDT'' for the last version of the witness's Written Direct Testimony; ''WRT'' for Written Rebuttal Testimony; ''Tr.'' for hearing transcripts; ''PFF'' for Proposed Findings of Fact, *etc.*

attempted to identify a ''fair operating margin (measured as a percentage of revenues)'' for a hypothetical webcaster. *Id.* at 5. Dr. Fratrik's proposal fails to create a royalty rate framework that can satisfy the statutory criteria *viz.,* rates that would have been negotiated in the marketplace between a willing buyer and a willing seller; the Judges cannot adopt it.

a. Dr. Fratrik's Misapplication of a Public Utility-Style Rate-Setting Process in the Present ''Willing Buyer/Willing Seller'' Statutory Context

Dr. Fratrik's methodology mimics the methodology by which government agencies or commissions set rates for public utilities or other regulated natural monopolies. There is no basis in the Act or in economic theory to support the use of this paradigm to establish royalty rates for the licensing of sound recordings by noninteractive webcasters.

A fundamental defect in this reasoning is Dr. Fratrik's requirement that the statutory royalty rate must provide for a fixed ''profit margin'' for webcasters. *See* 4/27/10 Tr. at 1138 (Fratrik) (''I believe the 20 percent rate is what they would strive to get *and have to get.''*) (emphasis added). Dr. Fratrik does not provide any evidentiary support for the assumption that the record companies, *i.e.,* the willing sellers in the hypothetical marketplace, would accept (or be compelled to accept) a royalty rate simply because it allowed buyers to realize a predetermined level of revenue as profits. Further, Dr. Fratrik does not provide any evidentiary support for his assumption that the buyers, *i.e.,* the webcasters, would require a royalty rate low enough to maintain a predetermined 20% profit margin or otherwise be driven out of the marketplace. *See* 4/27/10 Tr. at 1166–67 (Fratrik) (Dr. Fratrik unaware of any webcasters earning 20% operating margin).

Not only does Dr. Fratrik's methodology lack evidentiary support, it has embedded within it a perverse incentive structure. Dr. Fratrik's methodology would cause the royalty rates to be a function not only of the revenues of the webcasters, but also a function of: (i) The other (non-royalty) operating costs incurred by the webcasters; and (ii) the guaranteed profit (20% according to Dr. Fratrik) after inclusion of the (to be determined) royalty costs. This fundamental flaw in Dr. Fratrik's methodology can be demonstrated algebraically as follows:

Dr. Fratrik's requirement of a 20% operating profit for webcasters can be expressed as:

TOTAL PROFIT = TOTAL REVENUE (TR) − TOTAL COST (TC) = 0.2(TR)

Dr. Fratrik dichotomizes costs into royalty costs (*i.e.,* the unknown to be determined) and all other operating costs, which can be expressed as:

TC = Royalty Costs (rc) + All Other Operating Costs (oc)

So,

TR − rc − c = 0.2(TR)

Subtracting 0.2(TR) from both sides of the equation results in the following:

0.8(TR) − rc—oc = 0

Adding rc to both sides of the equation results in the following:

0.8(TR) − oc = rc

For presentation purposes, the above equation can be set forth in reverse as:

rc = 0.8(TR) − oc

This presentation makes plain that in Dr. Fratrik's model the royalty rate would be a function of: (i) The revenues of the webcaster (TR); and (ii) all other webcaster costs (oc). Egregiously, the relationship between the royalty rate and all other costs incurred by the webcaster (oc) would be inverse, *i.e.,* as all other costs (oc) increased, the section 114 royalty rate would decrease.

Thus, a webcaster would have no incentive to minimize or otherwise reduce all other operating costs, because higher operating costs would result in a lower royalty paid to owners/compulsory licensors of sound recordings. Such a result would be perverse: The royalty revenue realized by the owners/licensors would be subject to the cost-minimization successes or failures of the webcasters under a formula by which the latter had no incentive to minimize costs.[21]

As previously noted, Dr. Fratrik's methodology mimics the setting of public utility rates for natural monopolies. In that setting, the ''unknown'' variable is the rate to be charged to the end-user, which, when multiplied by the number of units of the service sold, establishes the revenue received by the seller. What can be ''known'' (*i.e.,* determined via such public utility-style hearings) are: (i) The reasonable costs incurred by the utility; and (ii) the fair rate of return to which the utility is deemed entitled by consideration of appropriate marketplace returns on capital. *See generally* Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice* 169 (2d ed. 1988).

In the present proceeding, the ''unknown'' is different, but the proposed methodology is similar. What is ''unknown'' is one element of total costs, *i.e.,* the royalty fee. The revenues received by the sale to the end-users (*i.e.,* the provision of the listening experience to consumers) is known (or estimated), whether as a function of advertising revenues, subscriptions, or both. Here, as in classic rate regulation, the percentage to be realized as a rate of return (profit) likewise is known or discovered (as Dr. Fratrik purported to have ''discovered'' the 20% return by his examination of the assertedly analogous terrestrial radio marketplace).

The foregoing analysis crystalizes a fundamental problem in Dr. Fratrik's analysis: Rate-setting proceedings under section 114 of the Act are not the same as public utility rate proceedings. The Act instructs the Judges to use the willing buyer/willing seller construct, assuming no statutory license. The Judges are not to identify the buyers' reasonable other (non-royalty) costs and decide upon a level of return (normal profit) sufficient to attract capital to the buyers.

Moreover, Dr. Fratrik's methodology attempts to graft a public utility style rate—designed to regulate a natural monopoly—onto a rate-setting scheme in which he properly acknowledges the existence of a multitude of buyers, whose costs are critical to his analysis. Public utility-style rate-setting procedures are designed to consider the costs and potential returns to a monopoly seller, not the costs or potential returns of numerous buyers.

Not only does Dr. Fratrik's methodology improperly apply the public utility style rate-setting process, it ignores and thus exacerbates a particularly thorny issue in such rate regulation. Regulators of natural monopolies such as public utilities must ascertain the actual operating costs of the monopolist, and disallow inappropriate costs from entering the ''rate base.'' This undertaking is very difficult. *See generally* Richard Posner, *Economic Analysis of Law* 367 (6th ed. 2003) (''The regulatory agency's success in monitoring the regulated firm's costs will inevitably be uneven.''); Paul Krugman & Robin Wells, *Microeconomics* 374 (2d ed. 2009) (''[R]egulated monopolies . . . tend to exaggerate costs to regulators . . . .'').

Here, Dr. Fratrik relies upon only Live365's particular cost data, rather

[21] If webcasters operating under Dr. Fratrik's methodology did minimize or otherwise reduce all other operating costs, then, in order to prevent an increase in their pre-established profit margin, the royalty rate would need to increase. However, given that the Act requires these rates to be fixed for five years, the webcaster could reduce or minimize all other operating costs and simply pocket the profit, increasing their profit percentage above the level set by the Judges.

than any industry-wide cost data, without providing any evidence that Live365's cost structure is representative of the industry. SX PFF ¶¶ 312–322. Further, there is no breakdown by Dr. Fratrik of those other operating costs incurred by Live365 that would ensure that his *de facto* rate base includes only appropriate categories of costs incurred at minimally efficient levels.

To the extent Live365 is not sufficiently representative of all webcasters (or representative at all of other webcasters), Dr. Fratrik's methodology would yield an inaccurate royalty rate. On a more general level, to the extent the cost structure of any given webcaster is not representative of the industry writ large, Dr. Fratrik's methodology is hopelessly impractical. To utilize rate-of-return style regulation in a competitive industry such as webcasting would require information regarding the cost structures of thousands of buyers of sound recordings.

This defect in Dr. Fratrik's methodology was made plain during his cross-examination. For example, Dr. Fratrik admitted that if other royalties (such as for musical works paid by Live365 to Performing Rights Organizations) were to increase, then, *ceteris paribus,* under his methodology the royalties paid to SoundExchange for sound recordings would decrease. 4/27/10 Tr. at 1127 (Fratrik). This relationship, as Dr. Fratrik also admitted, existed with regard to all costs (other than sound recording performance royalties) incurred by a webcaster. Pursuant to his methodology, for example, a webcaster's staff wages, payments to advertising agencies, and payment to bandwidth suppliers could all depress the sound recording royalty. *Id.* at 1125 (Fratrik). Thus, Dr. Fratrik was compelled during cross-examination to conclude:

> Q: Okay. So basically the way you modeled this out, if anybody else who supplies an input to Live [365] raises their price, the result is going to be your suggested royalty rate goes down, right?
>
> A: Assuming all the other factors remain constant.

Id. at 1127–28.

The Judges conclude that two glaring and fatal defects in Dr. Fratrik's methodology are: (i) Its ill-conceived attempt to utilize the public utility style ratemaking construct in this ''willing buyer/willing seller'' context; and (ii) its reliance upon an inverse relationship between the sound recording royalty rate and all other operating costs incurred by webcasters.[22] Thus, while (in the interest of completeness) the following section discusses details of the methodology proposed by Dr. Fratrik, the Judges' rejection of his overall rate structure alone constitutes a sufficient basis to reject Live365's proposed rate.

b. The Specific Elements of Dr. Fratrik's Model and His Proposed Rates

As summarized below, even assuming, *arguendo,* that the Live365 model had been acceptable in theory to the Judges, the inputs in that model—costs, revenues and profit margin—failed to establish a credible ''marketplace'' rate under the ''willing buyer/willing seller'' standard.

(1) Costs

Dr. Fratrik assumed that Live365's cost structure would serve as a good conservative proxy for the industry as it is a mature operator. Fratrik WDT at 16. This assumption is unsupported by the evidence, which revealed an array of existing webcasting services and business models. SX PFF at ¶ 323.

Moreover, it would be unreasonable for the Judges to conclude, as Live365 urged, that these many disparate business models might be experiencing essentially the same unit costs. Indeed, Dr. Fratrik conceded that even Live365 has two separate business lines, ''broadcasting'' services[23] and webcasting and, further, that Live365 also acts as an aggregator with respect to webcasting. Dr. Fratrik offered no example of a comparable participant in the industry that is structured in this manner. Further, Dr. Fratrik failed in his attempt to adjust Live365's costs to isolate only webcasting operations, because he failed to address the *synergistic* nature of Live365's various lines of business. SX PFF at ¶¶ 355, 357, 358.

(2) Revenues

The revenue side of Dr. Fratrik's analysis suffers from infirmities as well. Most importantly, Dr. Fratrik admitted that the advertising revenue estimates (from ZenithOptimedia and Accustream) upon which he relied were ''challenging'' because many webcasters do not report their revenues publicly. 4/27/10 Tr. at 1220 (Fratrik). The limitations of these databases diminished the credibility of the analyses that depended upon them.

That analysis is apparently based only on Dr. Fratrik's analysis of revenues using the data Dr. Fratrik found to constitute his ''upper bound,'' derived from ZenithOptimedia data. In an attempt to avoid the acknowledged problems with these data, Dr. Fratrik attempted to mix and match his several revenue data sources. To further muddy the statistical waters and compromise his analysis, Dr. Fratrik added to the ''upper bound'' and ''lower bound'' of his combined data sets a third separate source—Live365's own subscription revenue data. This further admixture only underscores the lack of rigor and persuasiveness in the Live365 analysis.[24]

(3) Profit Margin

Dr. Fratrik has not provided adequate support for the assumption of a 20% operating margin for webcasters in his analysis. That operating profit margin was not put forward as either a historical profit margin (or a forecasted profit margin) for webcasters. Indeed, Dr. Fratrik conceded that he had no ''evidence that actual webcasters'' would require a 20% operating margin, and that he was not aware of any

[22] The Judges distinguish Dr. Fratrik's methodology from a structure that would be based upon the percentage-of -revenue realized by a webcaster, *without regard to the webcaster's other costs.* If Dr. Fratrik's methodology had simply made the royalty rate a function of webcaster revenue, the methodology would have relied upon a positive (*i.e.,* direct) relationship—as revenues received by webcasters increased, royalty rates would also increase. Such a methodology would constitute a percentage-of-revenue royalty rate, which (as noted *supra)* was rejected on evidentiary bases in *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings, Final rule and order,* 67 FR 45240 (July 8, 2002)(*Web I*) and *Web II,* yet (as also noted *supra*) was not foreclosed by either of those decisions as a potential *future* basis for determining rates in a section 114 proceeding.

[23] Live365 refers to the services it provides to *webcasters* as ''broadcasting'' services, in an Orwellian (and unsuccessful) attempt to distinguish its principal webcasting business from its ancillary webcasting support services.

[24] Dr. Fratrik's analysis also makes certain assertions regarding future growth—or lack of future growth—in the webcasting industry. The Judges note that predictions by witnesses as to future industry growth are highly speculative—economists are not oracles and ergodicity should not be assumed—past growth (or decline) is not necessarily indicative of future trends. *See generally* John Maynard Keynes, *The General Theory of Employment, Interest and Money* 97 (1936) (''Our knowledge of the factors which will govern the yield of an investment some years hence is usually very slight and often negligible. . . . If we speak frankly, we have to admit that our basis of knowledge for estimating . . . amounts to little and sometimes to nothing . . . *even five years hence.*) (emphasis added). The instant dispute makes the point well because the economy was in recession in all of 2008 and economic activity overall remained depressed throughout 2009, causing a reduction in the revenues received by many businesses throughout the United States and the world. That decline does not necessarily foretell a trend in a particular industry, including the markets for interactive and noninteractive sound recording licenses.

webcaster currently earning a 20% margin. 4/27/10 Tr. at 1166–67 (Fratrik).

Rather, Dr. Fratrik's 20% figure was derived from the profit margins reported by the over-the-air (a/k/a terrestrial) radio broadcasting industry. SX PFF at ¶¶ 328, 330. However, the record of evidence in this proceeding does not support the notion that profit margins for webcasters are likely to be similar to the more capital intensive terrestrial radio industry. SX PFF at ¶¶ 332–335. In fact, Dr. Fratrik admitted that the terrestrial radio industry requires much higher capital costs than webcasting, and that the barriers to entry are higher for terrestrial radio than for webcasting. 4/27/10 Tr. at 1168–72 (Fratrik); *see also* SoundExchange rebuttal testimony of Dr. Janusz Ordover, WRT at 3 (''Dr. Fratrik's selection of a minimum expected margin of 20% is based on margins earned by terrestrial radio broadcasters, who operate in a market with higher fixed capital and other costs and therefore do not provide a useful benchmark from which to determine a reasonable operating margin.'').

In fact, when choosing the 20% figure, Dr. Fratrik did not even look at the returns earned by any other digital business, which are lower than 5%. 4/27/10 Tr. at 1173–74 (Fratrik). Likewise, if Dr. Fratrik had considered the operating margins of record companies, he would have had to reconcile the fact that they too had operating margins of approximately 5% or less. 4/27/10 Tr. at 1175–76 (Fratrik).

c. Live365's Proposed Aggregator Discount

Live365 seeks a further 20% discount applicable to the commercial webcasting per-performance rate for certain ''qualified webcast aggregation services'' that operate a network of at least 100 independently operated ''aggregated webcasters'' that individually ''stream less than 100,000 ATH per month of royalty-bearing performances.'' Rate Proposal For Live365, Inc., Appendix A, Proposed Regulations at § 380.2 and § 380.3(a)(2). This ''discount'' proposal may be more properly understood as a proposed term rather than an additional rate proposal. It is conditional; that is, it is applicable only to the extent that certain defined conditions are met (*e.g.,* minimum number of 100 aggregated webcasters and each individual aggregated webcaster streaming less than 100,000 ATH per month). It proposes to establish a mechanism whereby a group of commercial webcasters under certain qualifying conditions may utilize a ''webcast aggregation service'' to aggregate their monitoring and reporting functions. Rate Proposal for Live365, Inc., Appendix A, Proposed Regulations at § 380.2(m). Monitoring and reporting are compliance-related functions that are currently required of all individual webcaster licensees.

The Judges discern no theory and no evidence that would support an adoption of the so-called ''aggregator discount'' as a separate rate or as a separate term. Live365 submitted the testimony of Mr. Floater in support of the ''aggregator discount.'' He testified that the asserted benefits of an aggregation service flow to the individual webcasters who contract to use that service. As Mr. Floater asserted, the aggregator offers ''a streaming architecture that can aggregate tens of thousands of individual webcasters'' and provides individual webcasters with ''broadcast tools and services [that] contain costs. . . .'' Floater Corrected WDT at 11–14. Dr. Fratrik provided further testimony regarding these aggregation services, noting that they consisted of collecting and compiling ''all of the necessary documentation of the copyrighted works that are streamed and the number of total listening levels for each of these copyrighted works.'' Fratrik WDT at 38.

The Judges construe these ''aggregator services'' as benefits that individual webcasters receive pursuant to their contracts with an aggregator—such as Live365. Apparently, through certain economies of scale or otherwise, Live365 can provide these services at a lower cost per webcaster than the cost each webcaster would incur if it assumed the duties individually. That is a real economic benefit to the individual webcasters. In turn, Live365 can realize a profit from the fees it charges webcasters for these aggregation services, after Live365 incurs the costs of providing the aggregation services. Thus, the webcasters are enriched by the difference between the higher cost of providing these services individually and the contract rate they pay to Live365, and Live365 is enriched by the difference between the fee it charges the individual webcasters and the cost of providing the aggregation services.

Thus, the economic benefits of these aggregation transactions have already been accounted for in the private market through these contracts. Accordingly, the benefits and burdens of the services have already been addressed privately, and it would constitute a double-counting if the Judges were to reduce the rate paid by aggregators and received by the copyright owners.

Live365 contended that the discount is appropriate because copyright owners receive a benefit from the aggregation of these services. However, the copyright owners are not parties to the aggregation contracts between Live365 (or any aggregator) and the webcasters. To the extent there are external benefits arising from those agreements that inure to copyright owners, they are no different than any form of benefits that inure to third parties from the contractual arrangements of other parties. The Judges cannot compel such third parties to incur a cost in exchange for such unsolicited benefits.

This point relates to yet another basis to deny to Live365 a reduced royalty rate in exchange for its provision of aggregation services. Under the Act, royalty payments unambiguously are to be established and paid for ''public performances of sound recordings. . . .'' 17 U.S.C. 114(f)(2)(A). The aggregation services provided by Live365 are not themselves ''public performances of sound recordings,'' but rather are services that are complementary to the provision of ''public performances of sound recordings.'' Live365 is improperly attempting to characterize a distinct complementary service as an essential element of utility bundled into the ''public performance of sound recordings.'' The complementary—as opposed to bundled—nature of the service is underscored by the separate fee received by Live365 from the webcasters who voluntarily choose to utilize that service.

Further, since these aggregation services are not themselves ''public performances of sound recordings,'' the rationale for the statutory license is not triggered. The rationale for the statutory license is to cure the perceived market failure that may arise if multiple webcasters were required to negotiate for individual licenses for a multitude of recordings from the various copyright owners. That rationale does not present itself with respect to the aggregation services—and certainly, Live365 has not presented any evidence to that effect. Alternately stated, if an aggregator desired to internalize the benefit its services provided to the record companies, the aggregator could attempt to enter into voluntary contracts with the record companies. There is no market failure or other issue that would preclude or impede such negotiations and contracts. Of course, since Live365 indicated that copyright owners already receive these benefits as a concomitant to the services provided to the webcasters, there is no incentive for a copyright owner to pay for those benefits. (That is the economic nature of a positive externality.)

In sum, Live365 has asked the Judges to provide aggregators with

remuneration from the copyright owners that is both unavailable under the statute and that Live365 was unable to procure in the private marketplace. The Judges decline to do so.

d. Conclusions Regarding the Live365 Proposal Based on Dr. Fratrik's Model

For the foregoing reasons, the Judges decline to utilize Live365's proposed rate structure or rates to set the rates for the 2011–2015 rate period or establish a zone of reasonableness within which to set the rates.

Live365 contends that the rates for the 2011–2015 term should be set at a level below the 2010 rates to reflect certain factors identified in section 114(f)(2)(B)(i) and (ii) of the Act.[25] However, as a general principle, espoused in both *Web II* and *Web I,* and absent evidence to the contrary, these statutory considerations are deemed to have been addressed implicitly within the participant's proposed rate structure. *See Web II,* 72 FR at 24095; *Web I,* 67 FR at 45244. Live365 proffered no evidence to support another conclusion.

In the present case, given the Judges' rejection of the Live365 rate structure and proposed rates, they have no basis to depart from this general principle. Moreover, Live365 provides only a qualitative argument for its proposed downward adjustments, rather than a quantitative basis for a reduction below the 2010 rates. Further, even if qualitative arguments were sufficient in this regard, Live365 has not established such a basis for a decrease in webcaster royalty rates.

2. The SoundExchange Rate Proposal

a. Zone of Reasonableness

SoundExchange sought to demonstrate that its proposed rates were within a zone of reasonableness delineated by its economic expert witness, Dr. Michael Pelcovits. He constructed his zone of reasonableness based upon the following assumptions:

- The rates are intended to be those that would have been negotiated in the marketplace between a willing buyer and a willing seller;
- The rates are intended to replicate those that would have been negotiated in a hypothetical marketplace;
- The hypothetical marketplace is one in which no statutory license exists;
- The buyers in this hypothetical marketplace are the statutory webcasting services;
- The sellers in this hypothetical marketplace are record companies;
- The products sold consist of a blanket license for each record company's complete repertoire of sound recordings;
- A per-performance usage fee structure was adopted, rather than a fee structure based upon a percentage of the buyer's revenue, a per-subscriber fee or a flat fee.[26]

The Judges conclude that these general assumptions by Dr. Pelcovits are appropriate when determining the zone of reasonableness within which the statutory rates may be set.

b. Benchmark Analysis

Dr. Pelcovits utilized a ''benchmark'' approach, *i.e.,* an attempt to establish rates by comparing, and as appropriate adjusting, rates set forth in other agreements that he concluded were sufficiently comparable. Dr. Pelcovits's overall benchmark approach to establishing a rate structure is consistent with both *Web I* and *Web II.* Further, the Act itself authorizes the Judges to utilize a benchmark analysis: ''In establishing such rates and terms, the Copyright Royalty Judges may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements described in subparagraph (A).'' 17 U.S.C. 114(f)(2)(B).

The Judges, therefore, agree that it is appropriate to rely on benchmarks to establish rates in this section 114 proceeding.[27]

Dr. Pelcovits identified the following two categories of benchmarks:

- The then-contemporaneous license fees for statutory webcasting services that had been negotiated in two separate agreements under the WSA between SoundExchange and two groups of broadcasters: terrestrial (over-the-air) broadcasters represented by the NAB and Sirius XM;
- The then-contemporaneous license fees that had been negotiated between buyers and sellers in the market for interactive, on-demand digital audio transmissions.

Pelcovits WDT at 2.

The WSA Agreements relied upon by Dr. Pelcovits are such voluntary agreements. Thus, the Judges may rely upon those agreements as benchmarks, assuming the Judges find them to be sufficiently comparable, perhaps after any appropriate adjustments.

The agreements between buyers and sellers in the interactive market are not expressly identified under the Act as agreements upon which the Judges may rely as benchmarks in a proceeding under section 114. However, nothing in the Act suggests that it would be improper for the Judges to consider those agreements as potential evidentiary benchmarks, or as some other form of probative evidence. In this regard, the Act clearly does not constrain the Judges from considering any economic evidence (apart from non-precedential WSA agreements) that they conclude would be probative of the rate that would be established between willing buyers and willing sellers in the hypothetical marketplace—regardless of whether that evidence relates to a market other than the market for licenses of sound recordings by webcasters.[28]

Thus, the Judges conclude that it was proper for Dr. Pelcovits to use benchmark analyses in attempting to establish the zone of reasonableness for rates in this proceeding.[29]

[25] These factors are: (i) The promotional or substitution effects of the use of webcasting services by the public on the sales of phonorecords or other effects of the use of webcasting that may interfere with or enhance the sound recording copyright owner's other streams of revenue from its sound recordings; and (ii) the relative contributions made by the copyright owner and the webcasting service with respect to creativity, technology, capital investment, cost, and risk in bringing the copyrighted work and the service to the public.

[26] Dr. Pelcovits did not opine that a percentage-of-revenue-based fee or any other type of fee structure was economically improper. Rather, he indicated that he believed the ''per-performance approach'' constituted ''precedent'' established in *Web II,* and therefore he did ''not attempt to independently examine the merits of different rate structures.'' Pelcovits WDT at 6. As noted *supra,* however, *Web II* did *not* create such a precedent, but rather noted that the parties' failure of proofs regarding a proposed percentage-of-revenue fee structure ''does not mean that some revenue-based metric could not be successfully developed'' for use in a future proceeding under section 114. *Web II,* 72 FR at 24090. Nonetheless, even though he was mistaken in that regard, Dr. Pelcovits relied on that belief as to precedent by declining to consider a percent-of-revenue rate structure, or any other rate structure. Thus, the Judges can consider only his per-performance rate structure, and contrast it with Dr. Fratrik's methodology.

[27] The appropriateness of the benchmark method of analysis was called into question by Live365 through the rebuttal expert economic testimony of Dr. Michael Salinger, who described the benchmark approach as a ''shortcut,'' used ''because it is convenient, not because it is correct.'' Salinger WRT at 12–13.

[28] A wide array of potentially comparable markets can and should be considered by the Judges, including those with comparable economic characteristics. For example, a market in which copies of goods can be reproduced at zero marginal cost may provide relevant economic evidence (even if it is not a market for sound recordings), whereas, for example, a market for ancillary reporting services that benefits buyers and sellers of sound recording licenses (such as Live365's aggregator services discussed *infra*) may be economically quite distinct even though it relates to the same parties and licenses.

[29] Dr. Pelcovits's use of benchmarks in principle, discussed in this section, is a separate issue from the issues of whether the particular benchmarks he applied were appropriate, whether his adjustments to those benchmarks were correct or whether other adjustments may be required.

(1) SoundExchange's First Proposed Benchmark: The WSA Agreements

The first benchmark category relied upon by Dr. Pelcovits is comprised of two multi-year agreements that had recently been entered into between SoundExchange and two entities: (i) The NAB, covering webcasting by over-the-air (terrestrial) radio stations; and (ii) Sirius XM, covering webcasting of the music channels broadcast on satellite radio. Each of these agreements was entered into in 2009 pursuant to the WSA and each established royalty rates for the period 2011 through 2015. Together, these two agreements cover webcasters that paid more than 50% of the webcasting royalties received by SoundExchange in 2008. Pelcovits WDT at 14.

Both the NAB and Sirius XM agreements set royalty rates on a per-performance basis. The rates established by those agreements for the license term under consideration by the Judges are set forth below.

Year	NAB Agreement	Sirius XM Agreement
2011	$0.0017	$0.0018
2012	$0.0020	$0.0020
2013	$0.0022	$0.0021
2014	$0.0023	$0.0022
2015	$0.0025	$0.0024

Id. Dr. Pelcovits found these agreements to be ''useful to understand the bargaining range over which buyers and sellers would negotiate in the hypothetical market for statutory webcasting.'' *Id.* at 15.

The Judges agree for the following reasons:

- The rights being sold were precisely the rights at issue in this proceeding;
- The buyers (with the broadcasters represented as a group by the NAB) share characteristics with the buyers in the hypothetical market at issue in this case, but are not identical in all respects;
- The sellers are the same copyright owners whose copyrights are at issue in this case, albeit represented by SoundExchange;
- The copyrights will be used for statutory webcasting services; and
- The agreements were contemporaneous with the time at which the hearing in this proceeding was conducted.

The Judges find that additional reasons support the use of the WSA Agreements as benchmarks in this proceeding.

First, no later than September 2009, ''404 entities had opted into the NAB Agreement on behalf of several thousand individual stations.'' Kessler WDT at 21. Of those broadcasters, approximately 100 were start-ups, reporting their first instance of webcasting after the execution of the NAB Agreement. Ordover WRT at 18. Thus, the rates contained in the NAB Agreement clearly were acceptable to a large number of webcasters.

Second, in similar fashion, as of September 2009, several commercial webcasters opted into the Sirius XM Agreement. *See* Live365 Trial Ex. 25 at 18. The fact that these webcasters, who did not participate in the negotiations, nonetheless adopted the terms of the agreement is evidence that the negotiated rates and terms were reasonable and acceptable to the webcasters.

Third, it is noteworthy that the webcasters who have entered into the NAB Agreement are almost entirely dependent on advertising rather than subscription revenue. 4/20/10 Tr. at 283 (Pelcovits). This fact tends to address the concern raised by Dr. Michael Salinger, the economic expert testifying on rebuttal for Live365, that Dr. Pelcovits's interactive services benchmark analysis had failed to consider webcasters that were dependent primarily on advertising revenue.

Live365 raised a number of criticisms that it argued diminished the value of these WSA Agreements as benchmarks. The Judges address here each of Live365's questions.

(a) Were the rates in the WSA agreements increased in exchange for the revised lower rates for 2009 and 2010 that were agreed to by the parties to the WSA agreements?

Live365 alleged that the 2011–2015 rates in the WSA agreements are higher than they otherwise would be because SoundExchange acquiesced to a lowering of the already existing 2009 and 2010 statutory rates for the NAB and Sirius XM. Dr. Salinger surmised that SoundExchange must have bargained for some form of *quid pro quo* in the 2011–2015 rate structure in exchange for a reduction in the rates already established for 2009 and 2010. Salinger WRT at ¶¶ 55–56. Live365 presented no evidence of such a bargain, however.

On the other hand, Dr. Pelcovits opined that SoundExchange's reduction of the 2009 and 2010 rates, as permitted under the WSAs, was analogous to a ''signing bonus''—offered to induce the NAB and Sirius XM to settle early. That assertion, too, raised a factual question rather than an issue that required expert economic testimony. SoundExchange likewise did not proffer testimony or any other evidence to identify the benefit that SoundExchange received by reducing the statutory 2009 and 2010 webcasting rates.

Neither Dr. Salinger nor Dr. Pelcovits proffered any empirical evidence to support their respective hypotheses as to the relationship, *vel non,* between the reduction in the 2009–2010 rates and the rates for 2011–2015 in the WSA agreements. Neither did the respective parties proffer testimony from their other witnesses that would shed light upon the negotiating strategies of the parties as they related to this issue.

In the absence of such factual or economic evidence, the Judges cannot reach any conclusion regarding the relationship between the reduction of the 2009 and 2010 webcasting rates and establishment of the voluntary rates for 2011–2015 in the WSA agreements. Accordingly, the reduction in the 2009 and 2010 rates charged by SoundExchange to the NAB and Sirius XM cannot serve to diminish the value of the rates in the WSA Agreements as benchmarks in this proceeding.

(b) Does the grant by the four major record companies to the NAB of a waiver of the ''Sound Recording Performance Complement'' rules diminish the probative value of the NAB agreement as a benchmark?

Live365 asserts that the waiver by the four major record companies [30] of the ''sound recording performance complement'' for the benefit of the NAB in its WSA Agreement undermines the value of those rates as benchmarks. It is correct that, contemporaneous with entering into its WSA Agreement with SoundExchange, the NAB negotiated ''performance complement waivers'' with each of the major record companies. Pelcovits WDT at 20 n.21. These waivers allowed the NAB broadcasters to simulcast their broadcasts on the Internet even though the number of plays by an artist or from an album might exceed the allowable levels under section 114(j)(13) of the Act.[31] Live365, through its economic expert, Dr. Fratrik, opined that the waiver of the ''performance complement'' provided additional value to the NAB broadcasters, a value that must be bundled implicitly into the purported benchmark per-performance rates contained in the NAB/SoundExchange Agreement. Dr. Fratrik opined that if the terrestrial broadcasters

[30] As of the date of this Determination on remand, there are three major record labels, following the merger of EMI and Sony.

[31] In their role as terrestrial broadcasters, the NAB broadcasters were not bound by the ''performance complement,'' but in their role as webcasters they would have been subject to the restriction without the waiver.

covered by the NAB/SoundExchange Agreement had been bound by the ''performance complement,'' they would have been required to modify their webcasts, as opposed to simply simulcasting their terrestrial broadcasts. Fratrik WDT at 43–44.

However, neither Dr. Fratrik nor any other witness provided any empirical evidence to indicate the extent, if any, of any additional value realized by the NAB broadcasters in exchange for the waiver of the performance complement rules. Thus, the Judges are asked, in effect, to unbundle the per-performance rates in the NAB/SoundExchange Agreement, without any evidence as to the value of this ''stick'' within that bundle, *i.e.,* the waiver of the performance complement rules.

SoundExchange disputed the assertion that the waiver of the performance complement rules should reduce the efficacy of the NAB agreement as a benchmark. Even so, Dr. Pelcovits does admit the existence of *some* value in the waiver of the performance complement rules:

> The performance complement waivers are *uniquely valuable to broadcasters,* whose over-the-air programming is not subject to a sound recording copyright and therefore not subject to the performance complement. The waiver allows these broadcasters to re-transmit their terrestrial signal without having to alter the programming that they created primarily for a use not subject to the performance complement.

Pelcovits WDT at 20 n.21 (emphasis added).

Dr. Pelcovits notes though that ''[t]he market value of the waiver appears to be very small, since Sirius XM, with no such waiver, agreed to rates that are virtually identical over the life of the contract.'' *Id.* Dr. Pelcovits is correct. The differences between the per-performance rates in the NAB/SoundExchange Agreement and the Sirius XM/SoundExchange Agreement for the 2011–2015 rate period are illustrated on the following table.

Year	NAB Rate	Sirius XM rate	Difference
2011	$0.0017	$0.0018	−$0.0001
2012	0.0020	0.0020	0.0000
2013	0.0022	0.0021	+0.0001
2014	0.0023	0.0022	+0.0001
2015	0.0025	0.0024	+0.0001

Thus, the average annual difference in the per-performance rates between the two agreements is $0.00004. Accordingly, the Judges conclude that the waiver of the performance complement rule has no discernible impact on the value of the WSA Agreements as benchmarks.

(c) Does it matter if the terrestrial broadcasters covered by the NAB/SoundExchange Agreement were able to pay a higher rate because their webcasting costs are lower than the costs of pure webcasters?

Dr. Fratrik opined that the terrestrial commercial radio broadcasters have a vastly different cost structure than pure play webcasters, which allows them to pay higher royalty rates for sound recordings. Specifically, Dr. Fratrik noted:

- Terrestrial radio broadcasters who simulcast on the web their over-the-air transmissions have already incurred the necessary programming costs.[32]
- Terrestrial commercial radio stations can promote their Web site on their own broadcast stations, reducing their advertising costs.[33]
- Terrestrial radio broadcasters can use the sunk cost of a pre-existing sales force to sell online advertising.
- Terrestrial radio broadcasters have audiences more concentrated in the same geographic area than pure webcasters, thus allowing the former to realize more revenue selling advertising to local advertisers.

Fratrik WDT at 41–42. Consequently, Dr. Fratrik concluded ''terrestrial broadcasters are more willing to pay higher royalty fees for webcasting as they are able to generate greater profits from that industry.'' *Id.* at 42.

Live365 has not quantified or otherwise estimated the monetary value of these differences. Thus, even if this argument had substantive merit, the Judges could not make any specific adjustment of the rates in the NAB/SoundExchange Agreement to reflect these theoretical cost advantages.

More importantly, however, the recitation of these advantages inuring to the benefit of the NAB simulcasters is simply another way of stating that their business models afford them the *synergy* to expand horizontally across the landscape of differentiated sound recording sub-markets by paying a higher per-performance fee than webcasters with a more costly and less synergistic business model.[34] As noted in *Web I,* the Act does not provide for a consideration of ''the financial health of any particular service'' when establishing rates. 67 FR at 45254.

(d) Did the WSA agreements have the design, intent, and effect of raising the input costs of smaller webcasters?

Live365, through Dr. Salinger, opined that the parties to the WSA agreements set rates above market rates for 2011–2015 because they had strategically intended to use those rates as benchmarks, and thereby raise the costs of their rivals, *i.e.,* all other webcasters. Salinger WRT at 23. As Dr. Salinger notes, those parties had the power to influence the impact of those contractual rates, because they could elect—as they ultimately did—to permit these agreements and rates to be made available as potential precedents. *Id.* at 24.

This argument is theoretically plausible, as noted in the articles cited by Dr. Salinger. *Id.* at 24 (*citing* Steven Salop and David Scheffman, *Raising Rivals' Costs,* 73 Am. Econ. Rev. 267–71 (1983); Thomas Krattenmaker and Steven Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price,* 96 Yale L.J. 209 (1986)). However, Live365 has not provided any empirical or other evidence that would tend to prove the existence of such strategic coordination or conduct in this proceeding.

In the absence of any such evidence, the Judges cannot simply assume a multi-party conspiracy among SoundExchange, the NAB, and Sirius XM to increase the rates charged to the NAB and Sirius XM, in the hope that the Judges would utilize those WSA rates to establish the statutory rates. Although the Judges acknowledge that, generally, explicit or tacit collusion may exist among participants in concentrated industries, that general proposition cannot serve as the basis for an ultimate finding of specific tri-partite collusion, absent an adequate factual record.

[32] The webcasters on whose behalf NAB negotiated a deal with SoundExchange are predominantly simulcasters, *i.e.,* entities that offer terrestrial broadcasts of their programming and simultaneously transmit that same programming on the Internet. Ordover WRT ¶ 51.

[33] This point seems to confuse economic cost with out-of-pocket cost. If a broadcaster foregoes paid advertising from a third party in order to air an advertisement for its own webcasts, that broadcaster has incurred an opportunity cost equal to the advertising revenue that the third party would have paid.

[34] SoundExchange's rebuttal economic witness, Dr. Janusz Ordover, makes an important point in his critique of Dr. Fratrik's cost differential argument—one that relates to the rate structure analysis undertaken earlier in this Determination. Specifically, Dr. Ordover opines that SoundExchange would not offer pure webcasters a lower rate in light of their higher cost structures unless SoundExchange could ''price discriminate at the level of license.'' Ordover WRT at 15. In this context, Dr. Ordover then identifies the pros and cons of marginal cost pricing, as well as the impact of such price discrimination upon the subscription rates of the ultimate consumers, the returns to licensors, and the shifting of revenues between and among different webcasters. *Id.* at 14–16. These are the types of issues that would need to be addressed and supported by empirical analyses in a proceeding in which a party had proposed a rate premised on a form of price discrimination, such as a percentage-of-revenue based fee.

(e) Were the rates in the WSA agreements inflated to reflect litigation cost savings by the NAB and Sirius XM?

Live365 asserted that the rates in the WSA Agreements are higher than market rates because they reflect the litigation cost saved by the NAB and Sirius XM of foregoing a rate proceeding and its attendant expenses. Live365 PFF ¶¶ 322–326. Further, Live365 asserted that this litigation cost/opportunity cost saving only affected the settling webcasters, not SoundExchange, because the latter would be incurring litigation costs regardless, since other webcasters (such as Live365) remained as contesting parties at the time of settlement. Live365 PFF ¶ 283.

SoundExchange disputed these assertions on several grounds.

First, SoundExchange asserted that the principal reason for the WSA Agreements was that the parties had ''a high degree of confidence that the Judges would establish rates consistent with the willing buyer/willing seller construct . . . .'' SX PFF ¶ 282. Dr. Ordover explained that, consequently ''neither party likely would be willing to incur litigation costs in the event of a disagreement . . . .'' Ordover WRT at 16. This is certainly one explanation to counter Live365's assumption that the NAB and Sirius XM paid a rate premium to avoid litigation costs. The Judges recognize that rational parties will attempt to predict the determination of any tribunal, and that they will tend to settle if their respective predictions are sufficiently proximate.[35]

Second, SoundExchange asserted that it too had an incentive to avoid litigation costs, and that such an incentive offset the potential impact of any similar incentive on the settling webcasters with regard to the rates contained in the WSA Agreements. Ordover WRT at 5, 16–17; 8/2/10 Tr. at 351 (Ordover) (threat of litigation ''works on both sides''). However, Live365 is correct in its claim that SoundExchange still would have been required to participate in a rate proceeding against other contesting webcasters. Nonetheless, SoundExchange did avoid the potential impact of arguments that would have been made by the NAB and Sirius XM that might have resulted in lower rates. Instead, SoundExchange was required ultimately to contest the claims of only one webcaster, Live365.

In any event, neither party presented evidence to the Judges regarding how to quantify the relative opportunity costs saved by SoundExchange and/or the settling webcasters. For all these reasons, the Judges cannot adjust the marketplace rates to reflect any such impact arising out of the litigation costs allegedly avoided by the WSA Agreements.[36]

(f) Are the rates in the WSA agreements reflective of SoundExchange's monopoly power?

Live365 asserted that the rates in the WSA Agreements reflect the monopoly power of the single seller in those two contracts, *i.e.,* SoundExchange. Live365 PFF ¶ 286. As Live365 correctly notes, in the ''hypothetical market'' that the Judges are statutorily required to consider, the hypothetical sellers are the several record companies rather than a single monopolist. *Web II,* 72 FR at 24087, *Web I,* 67 FR at 45244.

Dr. Salinger, Live365's economic rebuttal witness, testified that it is ''a very general principle of economics'' that the presence of a monopolist ''poses a risk of increased prices.'' Salinger WRT at 26. SoundExchange's rebuttal economic witness, Dr. Ordover, concurred, acknowledging that SoundExchange ''may [have] additional bargaining power'' because of its status as the single seller. Ordover WRT at 22.

The power that these two economists acknowledged was the well-understood market power of a (single price) monopolist to set a price at a level higher than would be set in a perfectly competitive market, while also restricting the quantity sold to the level at which marginal revenue equals marginal cost. *See, e.g.,* Krugman & Wells, *supra,* at 367; Edwin Mansfield & Gary Yohoe, *Microeconomics* 364–65 (11th ed. 2004).

It is not at all apparent, however, that the market power of SoundExchange to command a high rate would be appreciably greater (if at all) than the power of the major record companies, who owned approximately 85% of supply (the sound recordings) and therefore comprise an oligopoly. 4/20/10 Tr. at 299 (Pelcovits). As stated by Dr. Pelcovits:

> [N]egotiation of the WSA Agreements by SoundExchange *does not significantly alter the market power equation.* Each record company has a unique catalog of sound recordings that are highly valued (or even necessary inputs) to any webcasting service. The individual record companies, as a consequence, have a degree of market power.

Pelcovits WDT at 17 (emphasis added). Dr. Pelcovits's testimony is consonant with contemporary economic understanding that oligopoly pricing behavior can mimic monopoly pricing decisions.

Economists once believed that oligopoly pricing may have been essentially indeterminate. More modern game theory analyses recognize, however, the strong potential for tacit collusion among long-standing oligopolists (such as the major record companies), after repeated ''tit for tat'' pricing maneuvers, that will cause oligopolistic pricing to approach monopoly pricing:

> [W]hen oligopolists expect to compete with each other over an extended period of time, each individual firm will often conclude that it is in its own best interest to be helpful to the other firms in the industry. So it will restrict its output in a way that raises the profits of the other firms, expecting them to return the favor. . . . [T]hey manage to act as if they had . . . an agreement. When this happens, we say that firms engage in tacit collusion.

Krugman & Wells, *supra,* at 401; *see* Hal Varian, *Intermediate Economics: A Modern Approach* 531 (8th ed. 2010) (''The threat implicit in tit for tat may allow the firms to maintain high prices.''). Such tacit collusion can lead to pricing by oligopolists at the monopoly level. *See, e.g.,* L. Kaplow, *On the Meaning of Horizontal Agreements in Competition Law,* 99 Cal. L. Rev. 683, 811 (2011) (''oligopoly pricing is akin to monopoly pricing.'').

Thus, consistent with Dr. Pelcovits's testimony, *theoretically* there *could* be no important difference between the bargaining power of the four major record companies and SoundExchange. However, as discussed *infra,* the evidence in this proceeding does not

[35] However, SoundExchange overstates the logic of this point. The mere fact that two adversarial parties reach a settlement premised upon their mutual prediction of the Judges' future determination does not mean that they have correctly predicted (with ''a high degree of confidence'' no less) that the rate the parties settled upon would be the same as the rates the Judges ultimately would have established. It is a sufficient inducement for the parties to settle if they agree on their prediction, not that their prediction be correct. It would be hopelessly circular if the Judges were to put their imprimatur on rates negotiated in a settlement merely on the assumption that the parties were able to predict how the Judges would apply the statutory standards. Such an argument would essentially require the Judges to abdicate their responsibilities and defer to the settling parties, whose self-declared rational expectations as to the Judges' future determination would be deemed both prescient and dispositive.

[36] Two ancillary points were made by the respective parties with regard to the alleged impact of litigation costs: Live365 asserted that the settling webcasters did not have the same capacity to absorb litigation costs as SoundExchange, but there was no evidence that indicated such a disparity existed or, even if it did, how it affected the rates upon which the parties settled. Fratrik WDT at 43; Ordover WRT at 17. SoundExchange argued that the settling parties had additional options beyond settle or litigate—they could either elect not to participate in the rate proceeding or decide not to webcast. SX PFF ¶ 284. Both of those supposed ''options'' seem extreme.

indicate that the rates in the WSA Agreements were so high as to enable SoundExchange to extract monopoly rents from webcasters.[37]

(i) The NAB's Countervailing Market Power

As Dr. Ordover noted, the NAB, which negotiated on behalf of a group of broadcasters, enjoyed a degree of bargaining power on the buyers' side during its negotiations with SoundExchange. Ordover WRT at 23; *see also* 7/28/10 Tr. at 129–30 (Salinger) (acknowledging balance of power in this context). This power arose from the fact that, at the time of the WSA Agreement negotiations, the NAB broadcasters had accounted for over 50% of the royalty payments to SoundExchange in the immediately preceding calendar year. Ordover WRT at 23; Live365 Trial Ex. 25. As Dr. Ordover testified, ''[s]uch added market power on the buyer side tends to mitigate, if not fully offset, additional leverage that SoundExchange might bring to the negotiations.'' Ordover WRT at 23; *Web II,* 72 FR at 24091 (''[T]he question of competition is not confined to an examination of the seller's side of the market alone. Rather, it is concerned with whether market prices can be unduly influenced by sellers' power or buyers' power in the market.'')

(ii) The Availability of a Rate Setting Proceeding

The monopoly power of SoundExchange was compromised by the fact that the NAB or any webcasters negotiating with SoundExchange could have chosen instead to be subject to the rates to be set by the Judges. Ordover WRT at 23. Dr. Ordover explained that ''[a]t some point, buyers such as the NAB members would simply elect to seek rates established by the Judges—which would be free of any potential cartel effects—rather than voluntarily agree to pay above-market rates.'' Ordover WRT at 23; *see* Salinger WRT at 27 (buyers can resort to the court if the collective seeks to charge more than each individual member could charge).

(iii) The Evidence Did Not Demonstrate That the Individual Record Companies Necessarily Would Have Negotiated a Lower Rate Than SoundExchange

As Dr. Ordover explained, the nature of the market indicated that SoundExchange might have been in a position to negotiate rates that were actually lower than the rates the record companies would have negotiated individually. More particularly, the existence, *vel non,* of SoundExchange's power to set higher prices ''depends partially on the assumption one makes about whether a webcaster requires access to the repertoire of all four major record companies in order to operate an economically viable business, or only to a subset.'' Ordover WRT at 23–24.

As Dr. Ordover further explained, if the repertoires of all four major record companies were each required by webcasters (*i.e.,* if the repertoires were necessary complements) and webcasters were required to negotiate with each record company individually, then each record company would have an incentive to charge a monopoly price to maximize its profits without concern for the impact on the market writ large. That is, while these higher prices would constitute profits for the record company receiving them, they would constitute higher monopoly costs (incurred four times—paid by webcasters to each of the four record companies). The webcasters would pass on the higher costs to listeners, thus reducing the quantity of sound recordings made available to end users. Ordover WRT at 25–26.

By contrast, SoundExchange, as a collective, would internalize the impact of the complementary nature of the repertoires on industry revenue and thus seek to maximize that overall revenue. This would result in lower overall rates compared to the situation in which the individual record companies negotiated separately. Ordover WRT at 27.

Of course, this argument would be valid only if the repertoires of the several record companies indeed were complements rather than substitutes. If it was sufficient for webcasters to obtain only the licenses for one (or less than all four) of the major record companies, then separate negotiations with individual record companies (absent collusion, tacit or otherwise) could lead to competitively lower royalty rates.

The parties presented no evidence from which the Judges could conclude that the repertoires of the respective record companies were complements or substitutes, or, perhaps, complementary to some degree and substitutional to some degree.[38] Thus, the Judges cannot conclude that SoundExchange necessarily wielded a level of pricing power sufficient to affect the use of the WSA Agreements as benchmarks.[39]

(g) Conclusion Regarding the WSA Agreements

On balance, the Judges conclude that the arguments made by Live365 as to why the WSA Agreements cannot serve as benchmarks are not persuasive. Therefore, the Judges conclude that the evidence permits these two agreements to serve as benchmarks in this proceeding.

(2) SoundExchange's Second Proposed Benchmark: The Adjusted Interactive Subscription Service Rate

In addition to its WSA Agreements benchmark, SoundExchange relied on Dr. Pelcovits's analysis of another purported benchmark—the market for interactive webcasting of digital

[37] An oligopolistic marketplace rate that did approximate the monopoly rate *could* be inconsistent with the rate standard set forth in 17 U.S.C. 114(f)(2)(B), as that standard has been construed by the D.C. Circuit and the Librarian of Congress. The D.C. Circuit has held that this statutory section does not oblige the Judges to set rates by assuming a market that achieves ''metaphysical perfection and competitiveness.'' *Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748, 757 (D.C. Cir. 2009). Rather, as the Librarian of Congress held in *Web I,* the ''willing seller/willing buyer'' standard calls for rates that would have been set in a ''*competitive* marketplace.'' 67 FR at 45244–45 (emphasis added). *See also Web II,* 67 FR at 24091–93 (explaining that *Web I* required an ''*effectively* competitive market'' rather than a ''*perfectly* competitive market.'' (emphasis added)). Between the extremes of a market with ''metaphysically perfect competition'' and a monopoly (or collusive oligopoly) market devoid of competition there exists ''[in] the real world . . . a mind-boggling array of different markets,'' Krugman & Wells, *supra,* at 356, all of which possess varying characteristics of a ''competitive marketplace.'' As explained in the text, *infra,* in this proceeding the evidence demonstrates that sufficient competitive factors existed to permit the WSA Agreements to serve as useful benchmarks, and does not demonstrate that the rates in the WSA Agreements approximated monopoly rates.

[38] In *Web II,* the Judges found that there was testimony sufficient to indicate that the several repertoires were substitutes rather than complements. 72 FR at 24093. The contesting parties in this proceeding did not provide the Judges with evidence sufficient to make a factual finding as to this issue.

[39] The Judges reject an additional argument made by SoundExchange that the WSA Agreements could be construed as competitive by comparing the prices negotiated by the major record companies in their agreements with ''custom radio services'' to the lower prices in the WSA Agreements. Pelcovits WDT at 19. The Judges agree with Dr. Salinger's critique that a comparison of rates for ''custom radio services'' and noninteractive webcasters is not an ''apples-to-apples'' comparison, because ''custom radio'' adds additional value in terms of substitutability for the purchase of music and adds a level of control for the listener. Salinger WRT at 26. Further, even Dr. Pelcovits acknowledges that custom radio service involves a ''degree of interactivity . . . and therefore is not necessarily comparable to noninteractive webcasting.'' Pelcovits WDT at 32. Thus, this issue posits at least two potential explanatory variables that could explain why the record companies negotiated higher rates for custom radio than SoundExchange negotiated for noninteractive services in the WSA Agreements: (i) The monopoly or oligopoly character of the seller(s); and (ii) the differentiated nature of the two services. Absent any empirical or other evidence that indicates how each of these explanatory variables relates to the pricing differential, SoundExchange's attempt to rely on the pricing differential as probative of a more competitive rate must fail.

performances of sound recordings. According to Dr. Pelcovits, that interactive market is comparable to the noninteractive market at issue in this proceeding for the following reasons:

- Both markets have similar buyers;
- Both markets have similar sellers;
- Both markets utilize a blanket license in sound recordings;
- Both markets are input markets;
- Both markets have a demand schedule for these inputs that is derived from the demand of ultimate consumers; and
- Both markets deliver the sound recordings via the Internet.

Pelcovits WDT at 3; 4/19/10 Tr. at 126 (Pelcovits).

In the interactive market, the rates for sound recordings are not subject to the statutory license. Rather, in the interactive market, the rates for sound recordings are set through marketplace negotiations between the owners of the sound recordings, as sellers/licensors, and the individual interactive webcasters, as buyers/licensees.

The major difference between the two markets is the role of the ultimate consumer in selecting the sound recordings for listening. In the interactive market (as the adjective connotes), the ultimate consumer essentially decides which sound recordings he or she will receive.[40] By contrast, in the noninteractive market (as the adjective again connotes), the consumer plays a more passive role, and the webcaster offers the consumer music that the webcaster anticipates the listener might enjoy (much like radio). *Compare* 17 U.S.C. 114(j)(6) with 17 U.S.C. 114(j)(7).

Thus, it is necessary to isolate the value of such consumer choice, *i.e.,* the utility of interactivity, and subtract that value from any estimate of the value of sound recordings in the interactive market, in order to make that value more comparable to the value in the noninteractive market.

Dr. Pelcovits attempted to make such an adjustment in his analysis (as well as other adjustments discussed *infra*), which resulted in his proposed per-performance rate of $0.0036 per play for a statutory noninteractive webcaster.

The Judges conclude, as the Judges concluded in *Web II,* that such an adjusted benchmark constitutes the type of benchmark that the Act permits (but does not require) the Judges to consider. However, the fact that this is an appropriate type of benchmark to be considered does not necessarily mean that any particular application of the benchmark will be of assistance in a given proceeding. Rather, the Judges must consider the application of such a benchmark, and decide whether to adopt or reject it *in toto* or whether it is necessary to adjust the proposed benchmark.

As explained *infra,* the Judges have concluded that the interactive benchmark proposed by Dr. Pelcovits on behalf of SoundExchange is of assistance in establishing a zone of reasonableness in this proceeding, but only after making certain significant adjustments to that proposed benchmark.

(a) The Methodology Utilized by Dr. Pelcovits in His Interactive Benchmark Analysis

Dr. Pelcovits opined that ''the interactive, on-demand music services [are] the best benchmark to use for the purpose of setting rates for statutory webcasting services in this proceeding.'' Pelcovits WDT at 23. Dr. Pelcovits testified, ''it is reasonable to predict that the ratio of per-subscriber royalty fees to consumer subscription prices will be essentially the same in both the benchmark and target markets.'' Pelcovits WDT at 23; *see* 4/20/10 Tr. at 277–78 (Pelcovits). The theory upon which Dr. Pelcovits relied to make this prediction was premised on the economic concept of ''derived demand.'' As Dr. Pelcovits testified, ''webcasters demand or have a need for the music performance because that's what their customers demand.'' 4/19/10 Tr. at 132 (Pelcovits); Pelcovits WDT at 23 (''I believe it is reasonable to predict that the ratio of per-subscriber royalty fees to consumer subscription prices will be essentially the same in both the benchmark and target markets.'').

However, in order to use the rates in this interactive benchmark market to develop rates in the target market, Dr. Pelcovits also concluded that he was required to make adjustments ''to account for the differences between the benchmark and target markets.'' Pelcovits WDT at 22; 4/29/10 Tr. at 127 (Pelcovits). Specifically, Dr. Pelcovits adjusted (i) the interactive benchmark rates to take into account the fact that there are more plays per subscriber in the noninteractive market; and (ii) the subscription prices in the interactive market to remove the value of interactivity. Pelcovits WDT at 23.

(i) The Marketplace Agreements Considered by Dr. Pelcovits

Dr. Pelcovits obtained 214 agreements between certain interactive webcasters and the four major record companies, *viz.,* Universal Music Group, Sony Music Entertainment, Warner Music Group, and EMI, that spanned the period from approximately 2004 through 2009, with an emphasis on contracts that were created in the most recent three years. Pelcovits WDT, App IV. Under the terms of these agreements, Dr. Pelcovits found that the interactive webcasters generally ''pay royalties on the basis of the greatest of three measures: A per-play rate; a percentage of gross revenue rate; and a per-subscriber fee.'' Pelcovits WDT at 29; 4/29/10 Tr. at 129–30 (Pelcovits).

Dr. Pelcovits had available for consideration, *inter alia,* two types of interactive webcasting models: (i) Subscription on-demand interactive streaming services and (ii) advertising-supported (nonsubscription) on-demand streaming services.[41] SoundExchange explained the difference between these models in the following manner, through the testimony of its industry witness:

- Subscription on-demand interactive streaming.

This type of webcasting allows a paying subscriber to request the exact song he or she wishes to hear. McCrady WDT at 12. In addition, most of these services allow their subscribers to conditionally download requested songs to their personal computer and sometimes to a portable storage device, such as an iPod. *Id.* These downloads remain available for listening at any time by a subscriber, provided that the subscription remains active. *Id.*

- Advertising-supported (nonsubscription) on-demand interactive streaming.

This type of webcasting is the same as subscription on-demand interactive

[40] The ability of the ultimate consumer to choose to listen to specific sound recordings renders that decision analogous to the decision to purchase music digitally or otherwise. Thus, as noted in the legislative history of the Digital Performance Right in Sound Recordings Act, that statute permits the owners of sound recordings to bargain directly with each interactive webcaster over the price of each transmission, in the same manner as if the parties were negotiating the price of a digital download for outright purchase. *See* H.R. Rep. No. 104–274 at 14 (1995) (''Of all the new forms of digital transmission services, interactive services are most likely to have a significant impact on traditional record sales, and therefore pose the greatest threat to the livelihoods of those whose income depends upon revenues derived from traditional record sales.'').

[41] Dr. Pelcovits also reviewed agreements between ''custom radio'' services and the four major record companies, agreements that, according to SoundExchange's witnesses, occupy a functional gray area between interactive and noninteractive services. *See* McCrady WDT at 16. Dr. Pelcovits made note of such agreements in his testimony, including a particular reference to the agreement between WMG and one such custom radio service, Slacker Premium. As discussed *infra,* Dr. Pelcovits needed data regarding the number of plays by Slacker Premium to serve as a proxy for the number of plays by noninteractive webcasters, because such data was not available for clearly noninteractive services. Pelcovits WDT at 32.

streaming except the listener does not subscribe and receives *gratis* the songs he or she wishes to hear. The webcaster sells advertising on the site and the listener hears the advertising as well as the specific songs requested. Mr. McCrady described these interactive webcasting services that derive their revenue from advertising alone and not from subscriptions to be ''experimental'' and not yet ''mature.'' 4/22/10 Tr. at 663 (McCrady); McCrady WDT at 15.

Dr. Pelcovits ultimately elected to ignore the advertising-supported (nonsubscription) on-demand interactive streaming in his analysis because, in his opinion, ''it is more straightforward to infer differences in consumer willingness-to-pay (and by extension how much the webcaster would be willing to pay for the license) from observed prices for subscription services.'' Pelcovits WDT at 24.

(ii) Dr. Pelcovits's Calculation of the Per-Play Rate in the Benchmark Interactive Subscription Market

Dr. Pelcovits proceeded to calculate the ''effective per play rate'' paid under the contracts between the benchmark interactive services and the four major record companies. To do so, he obtained data from the major record companies that revealed:

- The revenue reported by the interactive subscription services to the major record companies; and
- The number of unique plays those services reported to the major record companies.

Pelcovits WDT at 30; 4/29/10 Tr. at 128 (Pelcovits). The revenue data that Dr. Pelcovits analyzed represented not merely revenue paid under the per-performance rate structure in the interactive contracts, but rather all revenue, regardless of whether that revenue had been paid pursuant to one of the other structures contained in those contracts. Pelcovits WDT at 30.

As noted at the outset of this determination, given Dr. Pelcovits's assumption that only a per-performance (*i.e.,* per play) royalty rate structure would pass muster with the Judges, he only proposed a per-play royalty rate. Accordingly, Dr. Pelcovits determined an ''effective'' per-play royalty rate by combining the revenue reported and paid pursuant to the percentage-of-revenue structure and the per-play structure for the purposes of his analysis. Pelcovits WDT at 30.

The data reviewed by Dr. Pelcovits also showed that the percentage of plays on the interactive services attributable to the four major record companies was approximately 85%. 4/20/10 Tr. at 299 (Pelcovits). Thus, by considering only the data from the four major record companies, Dr. Pelcovits did not consider 15% of the sellers in his benchmark market.

With regard to the number of plays per subscriber for his benchmark market, Dr. Pelcovits counted ''the total number of unique plays of recorded music owned (or distributed) by the four major record companies reported by the interactive webcasting service(s).'' Pelcovits WDT at 30; 4/19/10 Tr. at 130–31 (Pelcovits). Dr. Pelcovits calculated the average number of monthly plays by these interactive subscription services to be 287.37 per subscriber. Pelcovits WDT at 31. To derive the effective per-play rate in the interactive market, Dr. Pelcovits then divided the total revenue collected by the record companies by 287.37, *i.e.,* the total number of unique plays. This division resulted in an effective per-play rate for the benchmark interactive subscription service market of $0.02194 per play. *Id.*

(iii) Dr. Pelcovits's Adjustments to the $0.02194 Per-Play Rate in the Benchmark Interactive Subscription Market

Dr. Pelcovits believed that it was necessary to make certain adjustments to the interactive benchmark streaming per-play rate before it could be applied to the noninteractive streaming market. In particular, Dr. Pelcovits adjusted for:

- The higher usage intensity (number of plays per month) by subscribers of noninteractive services compared to subscribers of interactive services; and
- The value that consumers place on the greater interactivity offered by the on-demand services compared to statutory services that do not offer that function.

Pelcovits WDT at 3, 31.[42]

(a) The Adjustment for Usage Intensity/Number of Monthly Plays

Dr. Pelcovits's first adjustment sought to account for the fact that there were a greater number of plays by subscribers of noninteractive services than by subscribers on interactive statutory services. Pelcovits WDT at 31; *see* 4/19/10 Tr. at 139–41 (Pelcovits).

While, as noted *supra,* Dr. Pelcovits was able to obtain data regarding the number of interactive plays, he admitted to difficulty in calculating the number of noninteractive plays. As Dr. Pelcovits candidly acknowledged, the noninteractive services ''do not report the number of subscribers in public documents or in data provided to the record companies or SoundExchange.'' Pelcovits WDT at 31.

In light of these difficulties, Dr. Pelcovits turned to data provided to the record companies for the subscription custom radio service Slacker Premium. Pelcovits WDT at 32. Although Slacker Premium is not a noninteractive service, because it allows for a degree of user customization, Dr. Pelcovits claimed that most of the music transmitted through the service is ''pushed to the consumer,'' rather than being truly on-demand. Pelcovits WDT at 32. Therefore, he concluded that the data on plays-per-subscriber for this one service would serve as a good proxy for plays-per-subscriber for statutory subscription services.[43] Pelcovits WDT at 32; 4/19/10 Tr. at 141–42 (Pelcovits). Although the unavailability of data for the number of plays of unambiguously noninteractive services reduces the usefulness of Dr. Pelcovits's proposed benchmark, it does not invalidate his methodology and results.[44]

Using the Slacker Premium data, Dr. Pelcovits determined that the average monthly plays per subscriber for a purely noninteractive service was 563.36. Pelcovits WDT at 32. Dividing the plays per subscriber for interactive services (287.37) by the plays per subscriber for statutory services (563.36) resulted in a per-play adjustment of 0.5101. Pelcovits WDT at 33.

(b) The Interactivity Adjustment

Dr. Pelcovits also made an adjustment to account for the difference in the relative value of a service that is interactive to one that is not. Dr. Pelcovits began his calculation of the interactivity adjustment by comparing the subscription rates for selected benchmark interactive services with the subscription rates for certain audio streaming services that he identified as ''arguably'' noninteractive services. Pelcovits WDT at 24; Live365 Trial Ex. 5 at 31–32.

Inasmuch as that ''value added'' feature (by definition) is not available for the noninteractive services, Dr.

[42] Dr. Pelcovits made a third adjustment in an attempt to account for the substitutional effect of the two types of services on CD and permanent download sales. Pelcovits WDT at 35–36. As explained *infra,* the Judges find that this adjustment is subsumed within his willing seller/willing buyer analysis.

[43] Dr. Pelcovits established his own definition of ''statutory services'' as ''services that offer no interactivity or limited interactivity,'' but he cautioned that he was not making a ''legal judgment'' as to whether his self-defined ''statutory services'' would qualify legally as noninteractive statutory services. Pelcovits WDT at 24–25 and n.22.

[44] Based on other data produced by Live365 during discovery, Dr. Pelcovits testified that he was able to confirm that the number of plays per subscriber that he calculated for Slacker Premium represented a reasonable estimate of the plays per subscriber for the statutory webcasting market. Pelcovits WDT at 32 n.27.

Pelcovits calculated the value of the interactivity feature in order to subtract it from his proposed benchmark service. Dr. Pelcovits calculated the purported value added by interactivity in two ways. 4/19/10 Tr. at 133–34 (Pelcovits); Live365 Trial Ex. 5 at 37–40.

First, Dr. Pelcovits compared the retail subscription prices for the interactive and noninteractive streaming services that he analyzed. Pelcovits WDT at 24; Live365 Trial Ex. 5 at 39–40. More particularly, he supervised the collection of information regarding 41 audio streaming services out of the agreements that SoundExchange had provided to him. Pelcovits WDT at 24; 4/19/10 Tr. at 134–35 (Pelcovits). However, Dr. Pelcovits excluded from his analysis 23 of those 41 services (56% of the total) because they were not subscription services. The remaining 18 services that he included in his analysis were paid subscription services. Pelcovits WDT at 24. Of these 18 subscription services, 11 were in the benchmark interactive market, and 7, according to Dr. Pelcovits, ''arguably qualify as statutory services.'' Pelcovits WDT at 24–25. Dr. Pelcovits found that the average monthly subscription price for the 7 noninteractive services that he defined as ''statutory'' was $4.13. Pelcovits WDT at 25.

With regard to the 11 interactive subscription services, Dr. Pelcovits calculated the average subscription price in two different ways. Pelcovits WDT at 25.

- First, Dr. Pelcovits calculated the average monthly subscription prices for the 11 interactive services—an average of $13.70.
- Second, Dr. Pelcovits re-calculated the average monthly subscription prices of 2 of these 11 interactive services to adjust them downward to reflect additional value these 2 services provided in the form of a fixed monthly number of permanent downloads at no additional cost to the subscriber.[45] This calculation resulted in a lower average monthly subscription price of $13.30.

Pelcovits WDT at 25; 4/19/10 Tr. at 135–36 (Pelcovits).

To make his interactivity adjustment, Dr. Pelcovits then subtracted the average (mean) subscription price of his 7 statutory noninteractive services ($4.13) from the average (mean) subscription price of his 11 benchmark interactive services. Because he calculated two different averages for the 11 benchmark interactive services (one ignoring the bundled free downloads and the other adjusting for the bundled free downloads, as noted *supra*), Dr. Pelcovits performed two different subtractions ($13.70 − $4.13; and $13.30 − $4.13). These calculations resulted in interactivity adjustment factors of:

0.301 (using the unadjusted subscription prices for the interactive services); and

0.311 (using the subscription prices for the interactive services adjusted for the bundled downloads offered by two of the benchmark interactive services).

Pelcovits WDT at 26; 4/19/10 Tr. at 136–37 (Pelcovits).[46]

As an alternative measure of the value of interactivity (to be subtracted from the benchmark value), Dr. Pelcovits performed a hedonic regression. Pelcovits WDT at 26; Live365 Trial Ex. 5 at 38–39. As Dr. Pelcovits accurately summarized, a hedonic regression is a statistical technique that can be applied ''to measure the value of different characteristics of a heterogeneous product.'' Pelcovits WDT at 26. *See also* Salinger WRT at 18 (''Hedonic regression is a statistical analysis of prices that seeks to explain prices as a function of product features.'').

This hedonic regression was used ''to isolate the value of interactivity to consumers of on-line music services'' by measuring ''the value of different characteristics of a heterogeneous product,'' which in this case is subscription audio streaming services. Pelcovits WDT at 26; 4/19/10 Tr. at 137 (Pelcovits). In his hedonic regression, Dr. Pelcovits analyzed a number of variables across the same 18 subscription-streaming services he had considered in his ''mean comparison'' interactivity adjustment, and applied those variables to the subscription price. Pelcovits WDT at 26–27. Among the variables that Dr. Pelcovits included in his hedonic regression were: (i) The presence of interactivity; (ii) the availability of a mobile application for the service; and, (iii) and the ability to conditionally download tracks to a portable device (expressed as ''Tethered Downloads'' in the regression table). Pelcovits WDT at 27; *see also* Live365 Trial Ex. 5 at 39.

Dr. Pelcovits's hedonic regression analysis resulted in an interactivity coefficient indicating that ''interactivity is worth $8.52 per month to the typical subscriber.'' Pelcovits WDT at 28; 4/19/10 Tr. at 137–39 (Pelcovits). Dr. Pelcovits then applied this $8.52 value for interactivity to the $13.30 mean value for the 11 interactive on-demand services he had analyzed (*see supra*). By this comparison, the interactivity feature comprised 64.1% of the entire value of the price paid by consumers for subscriptions to interactive webcasting subscriptions ($8.52/$13.30 = 64.1%). *Id.* Alternatively stated, the value of a noninteractive subscription would create an alternative interactivity adjustment factor of 35.9% (*i.e.,* 100% − 64.1%).

Based on the above techniques, Dr. Pelcovits derived three potential interactivity adjustment factors. Pelcovits WDT at 28. That range is shown in the following table.

Source	Interactivity adjustment
Comparison of Mean Subscription Rates—Unadjusted Subscription Prices	0.301
Comparison of Mean Subscription Rates—Adjusted Subscription Prices	0.311
Regression of Subscription Prices	0.359

Pelcovits WDT at 29.

(iv) Dr. Pelcovits's Derivation of Recommended Rates Based on the Foregoing Adjusted Benchmark Analysis

Dr. Pelcovits then multiplied the unadjusted per-play rate he had calculated in the benchmark market by the two adjustment factors. That is, he multiplied the unadjusted per-play rate by: (i) The per-play adjustment (that had accounted for the greater number of plays in the statutory noninteractive market) and (ii) the interactivity adjustment rate (calculated three different ways—two ''mean'' comparisons and one hedonic regression). Through this multiplication, Dr. Pelcovits derived the following range of recommended statutory per-play license fees:

[45] These ''permanent'' downloads are distinguished from the ''conditional'' downloads referred to by Mr. McCrady and discussed *supra,* because the listener cannot retain the ''conditional'' downloads after his or her subscription has expired. McCrady WDT at 12.

[46] ''Interactivity adjustment factor'' is simply the ratio of the mean noninteractive subscription price ($4.13) to the mean interactive subscription price, as calculated in two different ways ($13.70 or $13.30). Thus, the math is as follows: $4.13/$13.70 = 0.301 and $4.13/$13.30 = 0.311.

Recommended source of interactivity adjustment	Proposed statutory per-play rate (rounded)
Comparison of Mean Subscription Rates—Unadjusted Subscription Prices ($0.02194 × 0.51 × 0.301) (benchmark per play rate) × (# of plays adj.) × (interactivity adj.)	$0.0034
Comparison of Mean Subscription Rates—Adjusted Subscription Prices ($0.02194 × 0.51 × 0.311) (benchmark per play rate) × (# of plays adj.) × (interactivity adj.)	0.0035
Regression of Subscription Prices ($0.02194 × 0.51 × 0.359) (benchmark per play rate) × (# of plays adj.) × (interactivity adj.)	0.0040

Pelcovits WDT at 33; *see* 4/19/10 Tr. at 142–45 (Pelcovits) (explaining step-by-step calculations to derive recommended statutory per-play royalty fee).

Dr. Pelcovits then calculated the simple average of the above three recommended rates—$0.0036 per play (rounded). Pelcovits WDT at 33; 4/19/10 Tr. at 145 (Pelcovits).

(b) Review of Dr. Pelcovits's Interactive Benchmark Analysis

(i) The Overemphasis on Subscription Revenues and the Failure To Account for Advertising Revenues

Dr. Pelcovits's interactive benchmark analysis is of some, albeit limited, assistance in determining the royalty rate in the noninteractive market. His analysis was based upon the subscription revenues of noninteractive webcasters, without accounting for their advertising revenues. In fact, ''the reality of a lot of the services is that they have a mix of subscribers and non-subscribers.'' 7/28/10 Tr. at 55 (Salinger); *see also* 4/20/10 Tr. at 312–13 (Pelcovits) (acknowledging that most listening to noninteractive webcasting is by non-subscribers).

Moreover, as noted *supra,* Dr. Pelcovits possessed data regarding advertising revenue for both the benchmark market and the statutory market, yet he chose not to focus on such data, asserting that it failed to reflect the willingness of consumers to pay for the services.[47] Pelcovits WDT at 24.

The Judges conclude that the interactive benchmark model as developed by Dr. Pelcovits is compromised, and its usefulness reduced, by its failure to take into account the advertising revenue received in both the interactive benchmark market and the statutory noninteractive market.

(ii) SoundExchange's Failure To Incorporate Independent Label Contract Rates in its Benchmark Analysis

Dr. Pelcovits relied upon the contracts between the major record companies and 18 webcasters in performing his interactive benchmark comparison. However, he completely excluded from his rate analysis the rates charged by the independent record companies in his benchmark interactive market and in the noninteractive market that is the subject of this proceeding. This is an important omission, because, as noted by Live365's rebuttal economic witness, Dr. Michael Salinger, approximately 40% of the music streamed on noninteractive webcasts is owned and licensed by independent labels. Salinger WRT at 15. On the other hand, Dr. Salinger did not provide any empirical support for the conclusion that inclusion of the rates charged by independent labels would have resulted in different rates. SX RFF at ¶¶ 101–103.

Thus, the issue becomes one of allocation of the burden of going forward with evidence on this point. The Judges conclude that since SoundExchange had collected information on 214 agreements between webcasters and record companies, including independents, it was in the best position to go forward with evidence indicating the impact, *vel non,* of the rates charged by the independent labels. By failing to do so, SoundExchange compromised the probative value of its benchmark analysis. Accordingly, the Judges conclude that the absence of any evidence as to the impact of the rates charged by the independent labels, either within the model itself or as an adjustment, diminishes the value of that interactive benchmark analysis.

(iii) SoundExchange's Failure To Adjust for the Downward Trend in Rates in the Interactive Benchmark Market

The effective play rate in the interactive benchmark market calculated by Dr. Pelcovits covered an 18-month period from 2007 through 2009. 4/20/10 Tr. at 309–10 (Pelcovits). Dr. Pelcovits relied upon the average rate in that 18-month period. However, he did not account for the fact that the rate had been declining during this period, from $0.02610 in 2007 down to $0.01917 in 2009. By relying upon the average during the period, $0.02194, and not weighting more heavily in that average the more recent periods, Dr. Pelcovits's model failed to account for the temporal decline of rates during his period of analysis. Salinger WRT at 16–17; Live365 Reb. Ex. 1; 7/28/10 Tr. at 127–28 (Salinger).[48] Thus, the Judges conclude that the interactive benchmark rate analysis is compromised by the failure to adequately weight this downward trend in rates.

However, as Dr. Salinger acknowledged, this concern could have been addressed by multiplying Dr. Pelcovits's recommended $0.0036 rate by the ratio of the low 2009 rate to the average rate over the 18-month period, *i.e.,* by multiplying that rate by .01917/.02194 (or .8737). 7/28/10 Tr. at 128–29 (Salinger). SoundExchange performed this calculation and noted that the rate established by its interactive benchmark analysis decreased to $0.0031, still above its proposed rates for the term of the license. SX PFF ¶ 210.

(iv) The Limited Data Regarding Noninteractive Plays

Dr. Pelcovits candidly admitted that he was unable to obtain data regarding the number of monthly noninteractive plays, because such data was not available. Pelcovits WDT at 31–32. Although he attempted to use a different source as a proxy for such data—the monthly plays by the Slacker Premium service that allegedly had some noninteractive features—the probative value of his analysis was diminished by this lack of sufficient data.

[47] Dr. Pelcovits's decision to ignore advertising revenues in his analysis implicitly constituted an *a priori* rejection of the noninteractive webcaster business model that seeks revenue primarily through advertising rather than from subscriptions.

[48] *See* note 24 *supra,* regarding the more serious problem with attempts to predict future industry trends.

(c) Problems With Dr. Pelcovits's Hedonic Regression Used as an Alternative To Measure the Value of Interactivity To Be Subtracted From Interactive Benchmark Value

Dr. Salinger set forth the same valid overarching criticism of Dr. Pelcovits's hedonic regression adjustment as he had asserted with regard to Dr. Pelcovits's adjustment based on the ratios of royalties to mean subscription rates in the two markets. That is, Dr. Salinger opined ''*any* estimate of a reasonable royalty rate . . . suffers from the fundamental flaw that noninteractive Internet radio is primarily an advertising-supported business, not a subscription business.'' Salinger WRT at 18 (emphasis added).

On a more granular level, Dr. Salinger further questioned the results of Dr. Pelcovits's hedonic regression. First, Dr. Salinger disagreed with Dr. Pelcovits's use of ''dummy variables'' (*i.e.,* ''fixed effects variables'') in the hedonic regression. Second, Dr. Salinger questioned the significance of the results given what Dr. Salinger testified was the relatively broad confidence interval bracketing the estimated interactivity coefficient in the hedonic regression. Salinger WRT at 20, 21 n.31 and Exhibit 6; 7/28/10 Tr. at 66–69 (Salinger).

With regard to the first issue, Dr. Salinger noted, and Dr. Pelcovits did not disagree, that dummy variables ''are indicator variables that capture unobserved characteristics whose value does not change over time.'' Salinger WRT at 21; *see also* Pelcovits WDT at 28.

In the present case, Dr. Pelcovits included fixed effects/dummy variables for six separate interactive services—one each offered by Classical Archives, Digitally Imported, Pasito Tunes, and Altnet (formerly Kazaa), respectively, and two offered by iMesh.com. In his Written Direct Testimony, Dr. Pelcovits did not comment upon the impact of these fixed effects/dummy variables. However, he also ran his regression *without* these fixed effects/dummy variables. This alternative regression increased the value of interactivity from $8.52 to $10.55 per subscriber per month. Salinger WRT at 20.

This higher value for the interactivity feature, when *subtracted* from the overall value of an interactive service as computed by Dr. Pelcovits, ''caus[ed] the estimated royalty rate to decline . . . from $0.0036 to $0.0023.'' Salinger WRT at 20 (emphasis added). SoundExchange did not contest the probative value of this criticism, but rather acknowledged: ''Dr. Pelcovits also ran regressions without the fixed effects variables, and those results were produced to Live365.'' SX PFF ¶ 215. The Judges are mindful that this essentially undisputed revised value—$0.0023—is highly proximate to the rates established in the WSA Agreements.[49]

Dr. Salinger's second specific criticism of Dr. Pelcovits's hedonic regression, identified above, concerns the breadth of the confidence interval within which lies Dr. Pelcovits's estimated interactivity coefficient. Specifically, Dr. Pelcovits did not provide any ''confidence interval'' around his result. Salinger WRT at 21–22 and n.31. Dr. Salinger calculated that, at a 95% confidence interval, Dr. Pelcovits's regression results would have a range that would be far less (on the low end of the range) than the rate that Live365 proposed and far higher (on the high end of the range) than the rates that SoundExchange proposed. *Id.*

3. The ''Affordability'' of the Proposed Interactive Benchmark Rates

Live365 asserted that SoundExchange's interactive benchmark rate was too high. Specifically, Live365 asserted that this interactive benchmark rate could not be utilized because numerous webcasters would be unable to afford the $0.0036 rate derived from that analysis. Live365 PFF ¶¶ 216–222. Although Live365 characterizes this alleged unaffordability as a ''reality check,'' it is no such thing. A single price established in any market by its very nature inevitably will restrict some purchasers who are unable or unwilling to pay the market price. (In common parlance, they may be said to have been ''priced out of the market.'') The rate of $0.0036 may be too high for other reasons (and indeed it is), but the fact that any particular number of webcasters might not profit under that rate, or that others would either shut down or never enter the market, is not evidence that the rate deviates from the market rate. The essence of a single market price is that it rations goods and services; by definition, a non-discriminatory price system therefore excludes buyers who cannot or will not pay the market price (and excludes sellers who cannot or will not accept the market price).

[49] Dr. Pelcovits also acknowledged that his hedonic regression did not necessarily isolate product characteristics (such as interactivity in the present proceeding) from supply and demand effects on prices (subscription rates in the present proceeding). 4/20/10 Tr. at 373–76.

4. Judges' Conclusions Regarding the Commercial Webcasters Rates

To summarize the Judges' conclusions as discussed above: [50]

- The Judges will set a per-performance rate, in light of the fact that neither of the contesting parties proposed a percentage-of-revenue based rate or any other rate structure.
- The Judges shall not utilize the Live365 Model to establish either the rate for commercial webcasters or the zone of reasonableness within which an appropriate rate would lie.
- The Judges shall utilize the rates set forth in the WSA Agreements between SoundExchange and the NAB and Sirius XM, respectively, to establish an approximate zone of reasonableness for the statutory rates to be determined in this proceeding.
- The Judges shall utilize the SoundExchange interactive benchmark analysis, adjusted to reflect the undisputed impact of the fixed effects/dummy variables, to establish an approximate zone of reasonableness for the statutory rates to be determined in this proceeding.

The Judges are also mindful of the procedural context of this determination, as summarized at the outset of this decision, *supra.* Rates were set for noninteractive commercial webcasting almost three years ago, on March 9, 2011, for the 2011–2015 rate period. No participant sought a rehearing or appealed those rates to the D.C. Circuit.

Further, after the D.C. Circuit vacated the March 9, 2011, determination and the case was remanded to the Judges, neither Live365 nor SoundExchange requested any new proceeding in connection with any aspect of the prior determination. Indeed, Live365 did not respond to the Judges' request for

[50] In considering the Live365 proposal, the willing buyer/willing seller standard in the Act encompasses consideration of economic, competitive, and programming information presented by the parties, including (i) the promotional or substitution effects of the use of webcasting services by the public on the sales of phonorecords or other effects of the use of webcasting that may interfere with or enhance the sound recording copyright owner's other streams of revenue from its sound recordings; and (ii) the relative contributions made by the copyright owner and the webcasting service with respect to creativity, technology, capital investment, cost and risk in bringing the copyrighted work and the service to the public. *See* 17 U.S.C. 114(f)(2)(B)(i) and (ii). The adoption of an adjusted benchmark approach to determine the rates leads this panel to agree with *Web II* and *Web I* that such statutory considerations implicitly have been factored into the negotiated prices utilized in the benchmark agreements. *Web II,* 72 FR at 24095; *Web I,* 67 FR at 45244. Therefore, the Judges have implicitly incorporated such considerations in the evaluation of the benchmark proposals submitted by SoundExchange. Accordingly, the Judges conclude that SoundExchange's separate analyses discussing these statutory factors, *see* SoundExchange PFF, Point IX, are subsumed in its willing buyer/willing seller analyses.

suggestions as to how to proceed with the remand, and SoundExchange responded only with regard to the minimum fee issue that had been challenged on appeal by IBS, stating that the prior determination in that regard should be reaffirmed.

Thus, it is clear that the contesting parties had accepted the rates as established in the March 9, 2011, determination. The Judges are reluctant to upset settled expectations by retroactively altering rates that have been established for several years, and that licensees have already paid in some years, provided that those rates fall within the zone of reasonableness that the Judges determine in this proceeding.

The present *de novo* determination is substantively distinct in a number of respects from the prior determination, but the analysis leads to an approximate ''zone of reasonableness'' within which an appropriate rate for commercial webcasters can be established that includes the rates established in the March 9, 2011 determination.

Specifically, the Judges find that the approximate zone of reasonableness for the rates for commercial webcasters for the 2011–2015 rate period is as follows:

Year	Lower bound	Upper bound
2011	$0.0017 (NAB/SX rate)	$0.0023 (lowest adjusted interactive rate).
2012	$0.0020 (NAB/SX; Sirius XM/SX rate)	$0.0023 (lowest adjusted interactive rate).
2013	$0.0021 (Sirius XM/SX rate)	$0.0023 (lowest adjusted interactive rate).
2014	$0.0022 (Sirius SM/SX rate)	$0.0023 (lowest adjusted interactive; NAB/SX rate).
2015	$0.0023 (lowest adjusted interactive rate)	$0.0025 (NAB/SX rate).

The Judges recognize that the rates set previously for the 2011–2015 term fall within this zone of reasonableness,[51] and hereby adopt them.

Accordingly, with regard to the license for commercial webcasters, the Judges set the following per-play rates for the five-year period that began in 2011:

Year	Rate
2011	$0.0019
2012	$0.0021
2013	$0.0021
2014	$0.0023
2015	$0.0023

V. Rates For Noncommercial Webcasters

A. Noncommercial Educational Webcasters

On August 13, 2009, SoundExchange and CBI submitted a joint motion under 17 U.S.C. 801(b)(7)(A) regarding a partial settlement ''for certain internet transmissions by college radio stations and other noncommercial educational webcasters'' (CBI/SoundExchange Agreement). The parties sought to make the agreed rates and terms applicable to noncommercial educational webcasters for the period 2011 through 2015.[52] *Joint Motion to Adopt Partial Settlement,* at 1 (Aug. 13, 2009). CBI and SoundExchange reached the CBI/SoundExchange Agreement under authorization granted by the 2009 WSA. The Copyright Office published the terms of the settlement in the **Federal Register**. *See* 74 FR 40616 (Aug. 12, 2009). By virtue of that publication, the CBI/SoundExchange Agreement is ''available, as an option, to any . . . noncommercial webcaster meeting the eligibility conditions of such agreement.'' 17 U.S.C. 114(f)(5)(B).

On April 1, 2010, the Judges published the CBI/SoundExchange Agreement, with minor changes,[53] under the authority of section 801(b)(7)(A) of the Act. *See* 75 FR 16377 (Apr. 1, 2010) (including CBI/SoundExchange Agreement and NAB/SoundExchange Agreement). With respect to rates, the Agreement imposes an annual, nonrefundable minimum fee of $500 for each station or individual channel, including each of its individual side channels. *Id.* at 16384. Under the Agreement, those noncommercial educational webcasters whose monthly ATH exceed 159,140, pay additional fees on a per-performance basis. The CBI/SoundExchange Agreement also provides for an optional $100 proxy fee that noncommercial educational webcasters may pay in lieu of submitting reports of use of sound recordings. The agreement also contains a number of payment terms.

Section 801(b)(7)(A) of the Act provides that, after providing notice and opportunity for affected parties to comment, the Judges shall adopt a settlement agreement among some or all of the participants in a proceeding as a basis for statutory rates and terms, unless a participant in the proceeding objects and the Judges find that the agreement does not provide a reasonable basis for setting rates and terms. The Judges received 24 comments from terrestrial radio stations favoring adoption of the CBI/SoundExchange Agreement.[54] IBS opposed adoption of the CBI/SoundExchange Agreement. The Judges held a hearing on those objections on May 5, 2010.[55]

[51] However, the zone of reasonableness in this determination is significantly tighter than the zone established in the vacated determination. Specifically, the zone in the vacated determination was bracketed by a low per-play rate of $0.0019 and a high rate of $0.0036. 76 FR at 13036.

[52] The proposed regulatory language in the CBI/SoundExchange agreement originally included the following sentences in 37 CFR 380.20(b) that created confusion as to whether SoundExchange and CBI were asking the Judges to adopt the agreement as an option for noncommercial educational webcasters or whether the agreement would be binding on all noncommercial educational webcasters:

However, if a Noncommercial Educational Webcaster is also eligible for any other rates and terms for its Eligible Transmissions during the period January 1, 2011, through December 31, 2015, it may by written notice to the Collective in a form to be provided by the Collective, elect to be subject to such other rates and terms rather than the rates and terms specified in this subpart. If a single educational institution has more than one station making Eligible Transmissions, each such station may determine individually whether it elects to be subject to this subpart.

Digital Performance Right in Sound Recordings and Ephemeral Recordings, Proposed rule, 75 FR 16377, 16383 (Apr. 1, 2010); *see* 5/5/10 Tr. at 5–51 (Hearing on Joint Motion to Adopt Partial Settlement).

With the concurrence of SoundExchange's counsel, *see* 5/5/10 Tr. at 46–47, 50–51 (Hearing on Joint Motion to Adopt Partial Settlement), the Judges find the language confusing and unnecessary and decline to adopt it.

[53] The Judges modified a reference to earlier regulations to bring it up to date. Deeming it inappropriate to the purpose of CRB regulations, the Judges declined to adopt language regarding compliance or noncompliance with the Agreement and reservation of rights. *See* note 52 *supra,* and accompanying text.

[54] Many of these comments asserted that the rate structure was compatible with their stations' respective budget constraints, *see, e.g., Comment of Bill Keith for WSDP Radio, Plymouth-Canton Community Schools* (Apr. 20, 2010) (''The monetary amount was reasonable and most college or high school stations can live with the amounts charged for webcasting''), and several expressed satisfaction with the $100 proxy fee in lieu of reports of use. *See, e.g., Comments of Christopher Thuringer for WRFL, University of Kentucky* (Apr. 20, 2010); *Comments of David Black, General Manager, WSUM–FM* (Apr. 19, 2010).

[55] The Judges deferred a decision whether to adopt the settlement until IBS had an opportunity to present its witness testimony as part of its direct and rebuttal cases.

The rationale for the IBS objection to adoption of the settlement described in the CBI/SoundExchange Agreement has remained elusive throughout the proceeding. In its initial comments, IBS expressed its concern that adoption of the agreement would create an ''impression'' that the Judges had ''prejudged the outcome of the adjudicatory hearing,'' notwithstanding IBS's acknowledgement that ''the proposed rates and terms . . . are non-exclusive, *i.e.,* [the Agreement] provides for other parties' agreeing with SX to different rates and terms.'' *Comments of IBS* (Apr. 22, 2010).

During the May 5, 2010, hearing, IBS argued that by moving for adoption of their settlement agreement, CBI and SoundExchange were ''attempt[ing] to freeze IBS out of statutory rights to a decision from the Board on the record.'' 5/5/10 Tr. at 52 (Hearing on Joint Motion to Adopt Partial Settlement). IBS also raised for the first time specific exceptions to the $500 minimum fee and $100 proxy fee that are part of the CBI/SoundExchange Agreement. *Id.* at 62–64.

In closing argument, IBS reiterated its objection to adoption of the CBI/SoundExchange Agreement. When pressed by the Judges to articulate specific objections, IBS counsel stated that IBS objected to the agreement to the extent it applied to IBS's smaller members.[56] By this, the Judges understand counsel to be expressing concern that adoption of the agreement would prevent IBS from pursuing its rate proposal (for ''small'' and ''very small'' noncommercial webcasters) in the proceeding.

The Judges find that IBS did not interpose a proper objection under section 801(b)(7)(A)(ii) of the Act that would require the Judges to weigh the reasonableness of the CBI/SoundExchange Agreement. IBS's objection is premised on the erroneous assumption that adoption of the agreement would prevent IBS from pursuing its rate proposal. IBS's proposal relates to different categories of webcasters from those covered by the CBI/SoundExchange Agreement. While the latter covers noncommercial educational webcasters, the IBS proposal covers noncommercial webcasters (whether or not they qualify as ''educational'') that fall within its definitions of ''small'' and ''very small.'' Adoption of the one does not preclude (and has not precluded) consideration of the other.

In addition, even if the Judges were to consider IBS's objection to be proper, IBS failed to present any evidence to support a conclusion that the CBI/SoundExchange Agreement does not form a reasonable basis for setting rates and terms for noncommercial educational webcasters. IBS's counsel made dire predictions that the rate structure adopted in the agreement would prevent many IBS members from performing webcasting services. *See, e.g.,* 5/5/10 Tr. at 62–64 (Hearing on Joint Motion to Adopt Partial Settlement). IBS did not offer testimony from any adversely affected member, however, in spite of the Judges' invitation to do so. *Id.* at 81–82. By contrast, 24 noncommercial webcasters filed comments with the Judges stating that they support the rates and terms of the CBI/SoundExchange Agreement, which they found reasonable and affordable. The Judges find those comments to be both credible and persuasive.

Finding neither a proper nor a credible objection to the CBI/SoundExchange Agreement, nor other grounds requiring rejection, the Judges adopt the agreement (with the modification described *supra* at note 52) as the basis for rates and terms for noncommercial educational webcasters for the period 2011–2015.

B. Other Noncommercial Webcasters

1. Rate Proposals of the Participants

For noncommercial webcasters, SoundExchange proposes a royalty of $500 per station or channel (including any side channel maintained by a broadcaster that is a licensee, if not covered by SoundExchange's proposed settlement with CBI) for each calendar year or part of a calendar year during which the webcaster is a licensee under sections 114 and 112 of the Act. The licensee would pay the royalty in the form of a $500 per station or channel annual minimum fee, with no cap. The $500 fee would constitute the minimum fee under both 17 U.S.C. 112(e)(4) and 114(f)(2)(B), and would permit the noncommercial webcaster to perform sound recordings up to a limit of 159,140 ATH per month. If a station or channel were to exceed the ATH limit in any month, then the noncommercial webcaster would pay at the commercial usage rates for any overage. *Second Revised Proposed Rates and Terms of SoundExchange,* at 3–4 (July 23, 2010). SoundExchange's proposal would cover all noncommercial webcasters that are not covered by the CBI/SoundExchange Agreement (*i.e.,* noncommercial educational webcasters).

The IBS rate proposal is more difficult to discern. *See, e.g.,* 4/22/10 Tr. at 774–93 (Kass).[57] IBS proposes to create two new categories of noncommercial webcasters: Small noncommercial webcasters (defined as noncommercial webcasters with usage up to 15,914 ATH per month) and very small noncommercial webcasters (defined as noncommercial webcasters with usage up to 6,365 ATH per month). *Amplification of IBS's Restated Rate Proposal,* at 1 (July 28, 2010). Under the IBS proposal, small noncommercial webcasters would pay a flat annual fee of $50, which would also constitute the minimum fee. Very small noncommercial webcasters would pay a flat annual fee of $20, which would constitute the minimum fee. *Id.* at 2. Noncommercial webcasters that exceed

[56] [THE JUDGES]: You're not proposing a rate for noncommercial educational webcasters. Only CBI and SoundExchange are.

MR. MALONE: Right.

[THE JUDGES]: So why are you objecting to the adoption of that if you have a—two separate categories that you want adopted?

MR. MALONE: Well, the judges can certainly say that—I mean, there's nothing incompatible with them. The—

[THE JUDGES]: But I'm asking you why are you still objecting to the adoption of a $500 minimum fee for noncommercial educational webcasters when you have proposed new fees for two new types of services and have not proposed a fee for something called a noncommercial educational webcaster?

MR. MALONE: Well, our—

[THE JUDGES]: Where is your dog in that fight? I don't see it.

MR. MALONE: All right. The dog in that fight is—and, again, excluding indirect effects that I understand to be the context of your question. We have no objection to the terms that are there as long as they don't apply to our small stations.

[THE JUDGES]: So you're just objecting to it on the theory that you just hope that what's ever in there doesn't somehow get applied to your case, even though you're asking for two completely different services?

MR. MALONE: That's essentially correct, Your Honor.

9/30/10 Tr. at 660–61 (IBS Closing Argument).

[57] IBS did not file a formal rate proposal with the Judges prior to the evidentiary hearing. Instead, IBS included a vague request in the written direct testimony of one of its three witnesses, Frederick J. Kass, Jr., IBS's chief operating officer. Kass WDT at 1, 9 (''IBS Members should only pay for their direct use of the statutory license by the IBS Member. There should be no minimum fee greater than that which would reasonably approximate the annual direct use of the statutory license, not to exceed $25.00 annually.''). Capt. Kass's written testimony also included as an exhibit a joint petition to adopt an agreement negotiated between the RIAA, IBS, and the Harvard Radio Broadcasting, Co. that was submitted to the Copyright Office on August 26, 2004. That agreement contained rates that diverged from those Capt. Kass proposed in his testimony. This discrepancy led to a convoluted discussion during Capt. Kass's live testimony as the Judges strived to determine precisely what rate structure IBS was seeking. 4/22/10 Tr. at 774–93 (Kass). After the hearing, IBS submitted a ''Restatement of IBS's Rate Proposal'' on May 21, 2010, and an ''Amplification of IBS's Restated Rate Proposal'' on July 28, 2010. The proposal summarized in text is from IBS's July 28, 2010, submission.

15,914 ATH would be subject to the noncommercial webcasting rates proposed by SoundExchange, including SoundExchange's proposed per performance rates for transmissions in excess of 159,140 ATH per month. *Id.* IBS also expressly adopted SoundExchange's proposal with regard to ephemeral recordings under section 112. *Id.*

IBS also proposed that noncommercial webcasters transmitting more than 15,914 ATH but no more than 55,000 ATH per month, be permitted to pay a $100 annual proxy fee in lieu of submitting reports of use. *Id.* at 3. IBS proposed that noncommercial webcasters transmitting fewer than 15,914 ATH per month be exempted from making reports of use. *Id.* While couched as part of IBS's rate proposal, this is a proposed term that the Judges will consider in the discussion of terms, *infra,* part VI.

As an alternative to the foregoing proposal, IBS stated that it was ''prepared to offer to SoundExchange'' an annual $10,000 payment to cover IBS members that are small noncommercial webcasters. *Id.* The $10,000 payment was apparently an estimate based on IBS's proposed rates for ''small'' and ''very small'' noncommercial webcasters; to the extent that participation by IBS members were to exceed $10,000, ''there would be a true up within 15 days of the end of the year.'' *Id.*[58]

2. Evaluation of the Rate Proposals and Determination of Rates

Section 114(f)(2)(B) of the Act directs the Judges to ''distinguish among the different types of . . . services then in operation'' in applying the willing buyer/willing seller standard to determine rates and terms. *Id.* The recognition of different services is to be ''based on criteria including, but not limited to, the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers.'' *Id.*

In *Web II,* the Judges found that noncommercial webcasters constituted a different type of service that should be subject to a different rate from commercial webcasters.

> Based on the available evidence, we find that, up to a point, certain ''noncommercial'' webcasters may constitute a distinct segment of the noninteractive webcasting market that in a willing buyer/willing seller hypothetical marketplace would produce different, lower rates than . . . for Commercial Webcasters. A segmented marketplace may have multiple equilibrium prices because it has multiple demand curves for the same commodity relative to a single supply curve . . . . The multiple demand curves represent distinct classes of buyers and each demand curve exhibits a different price elasticity of demand. By definition, if the commodity in question derives its demand from its ultimate use, then the marketplace can remain segmented only if buyers are unable to transfer the commodity easily among ultimate uses. Put another way, each type of ultimate use must be different.

Web II, 72 FR at 24097. As a safeguard to ensure that the distinct segment of the market occupied by noncommercial webcasters did not encroach on the segment occupied by commercial webcasters, the Judges capped eligibility for the noncommercial rate at 159,140 ATH per month. *Id.* at 24097, 24099–100.

In this proceeding both SoundExchange and IBS have proposed rates for noncommercial webcasters that differ from the rates for commercial webcasters, implicitly endorsing the commercial/noncommercial distinction adopted by the Judges in *Web II.* For noncommercial webcasters that do not exceed the 159,140 ATH monthly thresholds, these participants have proposed the continuation of what is economically a zero rate for the sound recordings (together with a $500 minimum fee).

The Judges conclude that it is appropriate to continue this commercial/noncommercial distinction because there is a good economic foundation for maintaining this dichotomy. More specifically, a ''noncommercial'' webcaster by definition is not participating fully in the private market. Although the costs associated with the production and delivery of a sound recording remain the same regardless of whether it is played by a commercial or noncommercial webcaster, apparently the noncommercial webcaster receives little or no customer or advertiser revenue. (Revenue must be received from some source though, in order to pay the minimum fee.)

The zero per-performance fee has an economic basis because it reflects: (i) The paucity of revenue earned by a noncommercial webcaster; and (ii) the essentially zero marginal cost to the licensors of supplying an additional copy of a sound recording. The $500 annual minimum fee per channel or station defrays a portion of the transaction costs incurred in administering the license.[59]

Where SoundExchange and IBS part company is with IBS's proposal to make further distinctions among noncommercial webcasters based on the quantity of sound recordings they transmit under the statutory license (as measured by ATH).

Section 114(f)(2)(B) expressly mentions the quantity of use of sound recordings as an element that may be considered in recognizing different types of services. If a participant in a rate proceeding were to present evidence that, in a hypothetical marketplace, a willing buyer and a willing seller would negotiate a different rate for noncommercial webcasters at a given ATH level than they would for all other noncommercial webcasters, that would argue in favor of recognizing noncommercial webcasters at that ATH level as a distinct type of service. IBS, however, did not present any such evidence.

IBS presented testimony from three witnesses as part of its direct case.[60] Mr. John Murphy, general manager of WHUS at the University of Connecticut, Mr. Benjamin Shaiken, a student at the University of Connecticut and operations manager of WHUS, and Captain Kass, each testified about the distinctions between college (and, to a lesser extent, high school) radio stations and commercial radio stations. 4/21/10 Tr. at 570–73 (Murphy); Murphy WDT ¶ 4; 4/21/10 Tr. at 615 (Shaiken); Shaiken WDT ¶ 6; 4/22/10 Tr. at 761, 765 (Kass); Kass WDT ¶ 6. This is beside the point. There is no dispute between SoundExchange and IBS as to whether there should be different rates for commercial and noncommercial webcasters. Both participants accept the commercial/noncommercial distinction that was part of the Judges' determination in *Web II,* and the Judges adopt it in this proceeding. The issue at hand is whether there should be a

[58] It is unclear whether IBS intended this proposed payment as part of the rates proposed to the Judges for adoption, or as an offer to SoundExchange. Given the Judges' rejection of IBS's proposed rate structure, it is not necessary to resolve this ambiguity.

[59] Of course, this rate structure does not permit the licensors to recoup from the noncommercial webcasters any portion of the long-term (non-marginal) costs incurred in the creation and production of sound recordings.

[60] The Judges declined to admit the testimony of IBS's sole rebuttal witness, Frederick Kass, after it became apparent that his Written Rebuttal Testimony was not submitted in accordance with the Judges' rules (it was not verified in accordance with 37 CFR 350.4(d)) and Capt. Kass was unfamiliar with its contents. 7/29/10 Tr. at 292–96 (Kass). IBS sought reconsideration of the decision, which the Judges denied. *Order Denying IBS's Motion for Reconsideration of the Rulings Excluding Its Rebuttal Case* (Aug. 18, 2010). Even if Capt. Kass's testimony had been admitted, it could not have made up for the deficiencies of IBS's direct case, as such testimony would have been outside the scope of rebuttal testimony.

distinction among different groups within the category of noncommercial webcasters.

IBS's primary contention to support a different rate for ''small'' and ''very small'' noncommercial webcasters was that entities falling into those categories are unable to pay the $500 minimum fee proposed by SoundExchange. This argument fails for several reasons.

First and foremost, there is no record evidence to support the contention that noncommercial webcasters who transmit less than 15,914 ATH per month are unable to pay a $500 minimum royalty. IBS did not offer testimony from any entity that demonstrably qualified as a ''small'' or ''very small'' noncommercial webcaster.[61] Conclusory statements by counsel that a $500 minimum royalty is unaffordable for smaller noncommercial webcasters are not evidence. *See, e.g.,* 5/5/10 Tr. at 62–64 (Hearing on Joint Motion to Adopt Partial Settlement); IBS PFF at ¶¶ 9–10; IBS PCL at ¶ 4. Further, these assertions are undercut by testimony that some of these same entities pay IBS close to $500 annually for membership dues and fees for attending conferences. *See* 4/22/10 Tr. at 803–05 (Kass). The only testimony that mentions any specifics about the finances of smaller webcasters is a reference by Captain Kass to a survey that showed that IBS members had an average annual operating budget of $9,000. Kass WDT at ¶ 9. The survey, which was conducted more than ten years ago, 4/22/10 Tr. at 835 (Kass), was not offered into evidence. Without documentary evidence that would allow the Judges to assess the validity of the survey, Capt. Kass's reference to it cannot be accepted as evidence. *See* 37 CFR 351.10(e). Even if the Judges could accept such a reference as evidence, it would not advance IBS's case. On its face, an assertion that the average operating budget for IBS members is $9,000 does not establish that its members lack the wherewithal to pay a $500 minimum royalty.

There also is no evidence in the record to establish any correlation between the quantity of sound recordings being transmitted by a noncommercial webcaster and the size of that webcaster's operating budget (and, thus, its ability to pay a $500 annual minimum fee).

In addition, the evidence strongly suggests that the ATH cutoffs that IBS proposed for ''small'' and ''very small'' noncommercial webcasters are arbitrary. It appears that IBS chose ATH levels that represent 10% and 4%, respectively, of the ATH cutoff for noncommercial webcasters employed in *Web II* and SoundExchange's rate proposal. *Id.* at 787, 791; IBS PFF at ¶ 10; IBS PCL at ¶ 1. Nothing in the record substantiates these ATH levels as definitive or conclusive of a webcaster's ability to pay a $500 minimum royalty.

Finally, even if there were a sufficient basis in the record to conclude that ''small'' and ''very small'' noncommercial webcasters are unable to pay a $500 minimum fee, that, in itself, does not demonstrate that a willing seller in a hypothetical marketplace would be prepared to negotiate a different, lower rate with them. That proposition is particularly dubious in this proceeding given the evidence in the record (discussed *infra*) that SoundExchange's average annual administrative cost exceeds $500 per station or side channel. The record does not support a conclusion that, in a hypothetical marketplace, a willing seller would agree to a price that is substantially below its administrative costs.

As to the statutory criterion of the ''nature of the use of sound recordings'' for distinguishing between types of services, there is no evidence in the record establishing that the use of sound recordings by ''small'' and ''very small'' noncommercial webcasters differs qualitatively from that of other noncommercial webcasters. 9/30/10 Tr. at 647–51 (IBS Closing Argument) (conceding the point).

For the foregoing reasons, the Judges find that IBS has failed to establish a basis for its proposal to recognize ''small'' and ''very small'' noncommercial webcasters as types of services that are distinct from noncommercial webcasters generally. The remainder of the IBS rate proposal (for noncommercial webcasters that exceed 15,914 ATH per month) is identical to the SoundExchange rate proposal. As noted *supra,* IBS proposed an additional term for a subset of noncommercial webcasters. This is discussed *infra,* part VI. The Judges, therefore, reject the IBS proposal for ''small'' and ''very small'' noncommercial webcasters and proceed to evaluate the SoundExchange rate proposal for noncommercial webcasters.

SoundExchange contends that its rate proposal (i) most closely approximates the rate that a willing buyer and willing seller would negotiate in a hypothetical market, (ii) is demonstrably affordable to a broad range of noncommercial webcasters, and (iii) is objectively reasonable given the average administrative cost per service or channel. The Judges agree.

The CBI/SoundExchange Agreement (*see* III.B.2.A, *supra*) is persuasive evidence that SoundExchange's proposal satisfies the willing buyer/willing seller standard. That negotiated agreement employs the same minimum per-channel fee without a cap, as well as the 159,140 ATH limitation. The fact that 24 noncommercial webcasters filed comments supporting the agreement corroborates that conclusion.

SoundExchange points out that it was established in *Web II* that 363 noncommercial webcasters paid royalties in 2009 similar to SoundExchange's current rate proposal, with 305 of those webcasters paying only the $500 minimum fee. *Web II (Determination on Remand),* 75 FR at 56874. Taken together with IBS's failure to present even a morsel of contrary evidence, the Judges find this fact to be strong evidence that noncommercial webcasters are able and willing to pay the proposed fees.[62]

[61] The two IBS witnesses who were actually engaged in webcasting were both affiliated with WHUS at the University of Connecticut, Storrs. There is no record evidence regarding the quantity of sound recordings transmitted by WHUS. Two facts in the record—WHUS's 2009 annual revenues of more than $500,000, and their annual profits of more than $87,000, 4/21/10 Tr. at 583–86 (Murphy)—suggest that WHUS is not a ''small'' or ''very small'' webcaster as those terms are conventionally understood. *See also id.* at 590 (''WHUS is probably one of the most financially well-off stations in the entire IBS system'').

[62] In its proposed findings, IBS introduced two new related arguments: (i) ''Congress in Section 114(f)(2) intended that the minimum rate be tailored to the type of service in accord with the general public policy favoring small businesses,'' and (ii) the Judges are required under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), to determine whether the $500 fee unnecessarily burdens IBS's members. IBS PFF (Reformatted) at ¶¶ 10–13. Both contentions are without merit.

The Judges find no support in the text or legislative history of the Act for the proposition that rates adopted under section 114(f)(2) must be tailored to benefit small businesses. The statute is quite clear that the Judges' task is to determine rates that ''most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.'' 17 U.S.C. 114(f)(2)(B).

IBS has also failed to establish that the RFA applies to this proceeding. The RFA defines a ''rule'' (that triggers review under the Act) as ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to'' the APA. 5 U.S.C. 601(2). Determinations of the Judges in rate proceedings are not subject to the notice and comment rulemaking process under the APA. Moreover, the RFA's definition of ''rule'' specifically excludes ''a rule of particular applicability relating to rates.'' *Id.*

Nor has IBS established that any of its members (or any entities falling within its proposed definitions of ''small'' and ''very small'' noncommercial webcasters) are ''small entities'' as defined in 5 U.S.C. 601(6). IBS did not introduce any evidence concerning any webcaster other than WHUS, and never even identified its own members in this proceeding.

In any event, the Judges did consider the circumstances of noncommercial webcasters in

Continued

Finally, the testimony of Ms. Barrie Kessler, SoundExchange's Chief Operating Officer, demonstrates that the $500 annual minimum fee is reasonable. Ms. Kessler estimated SoundExchange's annual administrative cost per station or channel to be approximately $825 on average. Kessler WDT at 25. IBS offered no persuasive evidence to dispute this estimate. As the Judges have noted in previous proceedings, it is reasonable and appropriate for the minimum fee to at least cover SoundExchange's administrative cost. *See, e.g., Web II (Determination on Remand),* 75 FR at 56873–74. With the average administrative cost exceeding $800, the Judges find a $500 minimum fee to be eminently reasonable and appropriate.

In conclusion, the Judges find that the evidence in this proceeding strongly supports SoundExchange's rate proposal for noncommercial webcasters. The Judges adopt that proposal for the 2011–2015 rate period.

VI. Terms

As part of every rate determination, the Judges adjust the regulatory language that effects the rate changes. These implementing terms are published in title 37 of the Code of Federal Regulations. The Judges are obliged to adopt agreed terms if, after published notice, no party prospectively bound by the terms objects. *See* 17 U.S.C. 801(b)(7)(A). For the Judges to adopt a contested proposed term, the proponent must show support for its adoption by reference to the record of the proceeding.

In this proceeding, both SoundExchange and Live365 proposed changes to the existing regulatory language. Some of the terms proposed by SoundExchange are contained in the NAB/SoundExchange and CBI/SoundExchange agreements adopted in this proceeding. The Judges will adopt any contested proposed terms only if the proponent meets its evidentiary burden.

A. Uncontested Terms

1. Collective

The Judges have concluded previously that designation of a single Collective is economically and administratively efficient. No party to this proceeding requested a different or additional Collective. SoundExchange seeks to continue as the sole Collective for royalties paid by commercial and noncommercial webcasters under the licenses at issue in this proceeding for the period 2011–2015.

SoundExchange is a section 501(c)(6) nonprofit organization governed by a Board of Directors comprised of an equal number of artist representatives and copyright owners. *See* Kessler WDT at 2. Over the years of its service as the Collective, SoundExchange has gained knowledge and experience and has developed efficient systems for achieving the goals of the Collective at a reasonable cost to those entitled to the royalties. *See id.* at 4. In the absence of any request or suggestion to the contrary, the Judges designate SoundExchange as the Collective for the 2011–2015 license period.

2. Stipulated Terms and Technical and Conforming Changes

SoundExchange and Live365 stipulated to certain terms in the Proposed Regulations appearing as an attachment to the Second Revised Proposed Rates and Terms of SoundExchange, Inc., filed July 23, 2010. They stipulated that some of the current provisions of the webcasting terms remain unchanged, that some provisions be removed or changed because the terms were applicable only to the 2006–2010 license period, and that some provisions be changed to reflect the terms of the NAB/SoundExchange and CBI/SoundExchange agreements.

The Judges find that the stipulated terms constitute for the most part technical and non-controversial changes that will add to the clarity of the applicable regulations. The Judges, therefore, adopt the terms proposed jointly by SoundExchange and Live365. In addition, the Judges adopt what they deem to be technical and conforming changes to the regulations proposed by SoundExchange, and not opposed by any party, in Section IV of their Second Revised Rates and Terms, filed July 23, 2010.

3. Electronic Signature on Statement of Account

SoundExchange proposed eliminating the requirement of a handwritten signature on the statement of account found in section 380.4(f)(3). SX PFF at ¶ 576. According to SoundExchange, allowing electronic signatures would make it easier for licensees to submit their statements of account. *Id., citing* Funn WRT at 3 n.1. Live365's proposed regulations would also eliminate the requirement for a handwritten signature on the statement of account. *See* Attachment to PFF, Proposed Regulations, § 380.4(f)(3).

The Judges find that this uncontested term would improve the ease and efficiency with which statements of account may be processed electronically. In addition, they find the change to be consonant with the public policy preference expressed by Congress in adopting the E–SIGN Act, Public Law 106–229, 114 Stat. 464 (June 30, 2000), which established a general rule upholding the validity of electronic signatures in interstate and foreign commerce.

The Judges note that the terms they adopted with regard to other categories of licensees did not eliminate the extant requirement for a handwritten signature on statements of account. *See, e.g.,* 37 CFR 380.13(f)(3) (for Broadcasters); 380.23(f)(4) (for Noncommercial Educational Webcasters). The signatories to the Agreements incorporating the handwritten signature requirement did not participate in the hearing, however, and did not request a change in the signature requirement in this proceeding. Given the advance of technology, the Judges anticipate such requests in the forthcoming rulemaking proceeding. *See* note 66, *infra.*

The adopted terms are included in the appended regulatory language.

B. Contested Terms for Commercial Webcasters

1. Terms Proposed by Live365

Live365 proposed changes to the definitions of two terms in section 380.2: ''performance'' and ''aggregate tuning hours.'' [63] Live365 PFF at ¶ 387 and PCL at ¶ 79. Specifically, Live365 proposed to modify the definition of ''performance'' to ''exclude[ ] any performances of sound recording that are not more than thirty (30) consecutive seconds.'' Live365 PFF at ¶ 387. Live365 suggested this modification would conform the definition of ''performance'' in section 380.2 to that of a ''performance'' or ''play'' defined in the four interactive service agreements reviewed by Dr. Pelcovits. *Id.* Live365 also contended that precedent has excluded partial performances from ''royalty-bearing'' performances, citing *Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket Nos.*

establishing the $500 fee, and found that the evidence supported their willingness and ability to pay it.

[63] In the proposed regulations attached to its proposed findings of fact, Live365 included an additional term: A proposed deadline for the completion and issuance of a report regarding an audit to verify royalty payments. *See* Attachment to Live365's Proposed Findings of Fact and Conclusions of Law, § 380.6(g). Live365 did not discuss this proposal in its proposed findings and conclusions, and Live365 presented no evidence to support the need for such a term. The Judges consider the proposal withdrawn.

2002–1 CARP DTRA3 & 2001–2 CARP DTNSRA, 68 FR 27506, 09 (May 20, 2003).

Live365's proposal regarding the definition of ''aggregate tuning hours'' sought to exclude programming that does not contain recorded music, *e.g.,* talk, sports, and advertising not containing music. Live365 PCL at ¶ 79. Live365 asserted ''programming without sound recordings should not be subject to consideration in regulations dealing with a royalty to be paid for the use of sound recordings.'' *Id.*

SoundExchange opposed both of the Live365 proposed modifications. SoundExchange contended that these proposed modifications would constitute new terms, not revisions to a rate proposal, which SoundExchange asserted may be revised, under section 351.4(b)(3), at any time up to and including submission of proposed findings of fact.[64] SX Reply Findings of Fact at ¶ 223 (hereinafter, RFF).

SoundExchange asserted that Live365's citation to interactive service agreements without more did not provide sufficient analysis and was insufficient to show the need for or benefit of the requested redefinition of ''performance.'' *Id.* at ¶¶ 226–228. SoundExchange pointed to Live365's failure to consider the potential effect of its definition of ''performance'' on the per-performance rate presented by Drs. Pelcovits and Fratrik. *Id.* at ¶ 230. SoundExchange contended that if the Live365 performance exclusion proposal were adopted, SoundExchange would require an upward adjustment to the per-performance rate.[65] *Id.*

With regard to the request to redefine ''aggregate tuning hours,'' SoundExchange argued that Live365 failed to point to anything in the record explaining, much less supporting, the need for the proposed change. *Id.* at ¶¶ 231–232. Live365 offered no evidence or analysis regarding the development of a performance rate based on the current definition of ''aggregate tuning hours.'' The parties developed their evidence regarding the proposed performance royalty rates using the existing definition.

Live365 has not met its burden regarding adoption of these terms. The Judges, therefore, decline to adopt either of Live365's proposed definitions.

[64] The Judges need not address this argument as they decline to adopt the proposal on other grounds.

[65] According to SoundExchange, the upward adjustment would result from a reduction in the number of plays in the calculation of a per-performance rate. SX RFF at ¶ 230.

2. Terms Proposed by SoundExchange

SoundExchange proposed several terms relating to the Webcasters' royalties at issue in this proceeding.[66] The terms proposed by SoundExchange follow.

a. Server Log Retention

SoundExchange urged the Judges expressly to include server logs as records to be retained pursuant to section 380.4(h). *See* Second Revised Rates and Terms of SoundExchange, Inc., Section III.A., Proposed Regulations, § 380.4(h) (July 23, 2010); Kessler Corrected WDT at 27. SoundExchange asserted that retention of these records is required under the current regulations, but requested this amendment because not all licensees retain server logs. SX PFF at ¶¶ 556–57; Kessler Corrected WDT at 27. SoundExchange asserted that ''[t]he evidence indicates marketplace acceptance of such a term,'' citing to the CBI/SoundExchange Agreement which contains an equivalent term. SX PFF at ¶ 555.

In its opposition to this term, Live365 noted that neither the NAB/SoundExchange Agreement nor the Commercial Webcasters Agreement contained this term nor do any of the interactive service agreements submitted in this proceeding. Live365 RFF at ¶ 555. Live365 further argued that SoundExchange failed to establish that the benefits to SoundExchange of this term outweigh the burden on licensees to comply. *Id.* at ¶ 557.

The Judges find that SoundExchange has failed to meet its evidentiary burden. None of the interactive agreements in evidence is as specific as the regulation SoundExchange proposes. Live365 Exs. 17 and 18; McCrady WDT, Exs. 104–DR & 106–DR. Rather, the agreements require licensees only to retain records relating to their obligations under the agreement and in terms no more specific than in the current regulation. *See, e.g.,* Live365 Exs. 17 at ¶ 7(h) and Ex. 18 at ¶ 7(h); McCrady WDT, Exs. 104–DR at ¶ 6(j) and 106–DR at ¶ 4(h). Since these agreements were negotiated in a setting free from the constraints of the regulatory scheme, they provide the best evidence of the agreement of a willing buyer and a willing seller in this respect.

SoundExchange's assertion that inclusion of this term in the CBI/SoundExchange Agreement constitutes ''marketplace acceptance'' is overbroad. As SoundExchange acknowledged, the parties reached agreement under atypical marketplace conditions, overshadowed by the possibility of a regulatory proceeding. *See* 9/30/10 Tr. at 547–48 (SoundExchange Closing Argument). Furthermore, while the CBI/SoundExchange Agreement contains the term, the NAB/SoundExchange and Sirius XM Agreements do not, thus undercutting the thrust of the SoundExchange argument.

SoundExchange failed to note, let alone balance, the burden on licensees against the likely benefits from the proposed change. The Judges are loathe to adopt a term without such evidence. The Judges decline to amend § 380.4(h) to specify server logs.

b. Standardized Forms for Statements of Account

SoundExchange proposed to require licensees to submit statements of account on a standardized form prescribed by SoundExchange. SoundExchange asserted that a standard form would simplify licensees' calculations of the royalties owed and facilitate SoundExchange's efficient collection of information from licensees. SX PFF at ¶¶ 572, 575. At the time of hearing in this proceeding, SoundExchange provided a template statement of account on its Web site. *Id.* at ¶ 574. SoundExchange noted that noncommercial educational webcasters are required pursuant to their WSA agreement to use a form supplied by SoundExchange. McCrady WDT, Ex. 103–DP at section 4.4.1.

Live365 opposed adoption of this term because it would have general application, thus affecting parties that did not participate in this proceeding. Live365 asserted that a change with such an impact is addressed more appropriately in a rulemaking proceeding. Live365 RFF at ¶ 574.

The Judges do not find support in the record for adoption of a mandatory standardized statement of account. As Mr. Funn testified, the majority of

[66] On October 21, 2013, during the pendency of this remand proceeding, SoundExchange filed a petition for rulemaking seeking changes to the CRB Notice and Recordkeeping regulations. In the petition, SoundExchange proposes changes to: (i) Standardize, consolidate, identify, and match reports to facilitate distribution of royalties; (ii) conform report formatting of electronic reports, including adoption of electronic signatures; (iii) require use of the International Standard Recording Code or another unambiguous identifier of tracks actually transmitted; (iv) require reports to include all performances transmitted by a licensee, even though some may not be subject to the statutory license; (v) address late or missing Reports of Use by shortening the reporting period, imposing late fees, and allowing proxy distributions; (vi) set time limits for submission of corrected or amended Reports of Use; (vii) require licensees to retain source documents for the data reported on the Reports of Use; and (viii) implement several regulatory changes denominated by SoundExchange as ''housekeeping.''

webcasters currently use the template form made available on SoundExchange's Web site. Funn WRT at 2; 8/2/10 Tr. at 492 (Funn) (''much more than half'' of webcasters currently use template). Mr. Funn provided no information quantifying the additional work for SoundExchange to process a nonconforming statement of account from the webcasters that choose not to use the template. Further, neither the NAB/SoundExchange Agreement nor the Sirius XM/SoundExchange Agreement contains this term. McCrady WDT, Exs. 101–DP and 102–DP.

Given the already widespread use of SoundExchange's template form, the lack of quantification in the record of the time savings to SoundExchange by having a standardized form, and SoundExchange's failure to include this term in the NAB/SoundExchange and Sirius XM/SoundExchange Agreements, the Judges find that the record does not support the adoption of this term.

c. Identification of Licensees and Late Fee for Reports of Use

SoundExchange requested that the Judges harmonize identification of licensees among the (i) notice of intent to use licenses under sections 112 and 114, (ii) statements of account, and (iii) reports of use, and to impose a late fee for reports of use. These two requests differ from the rest of the SoundExchange requests in that these are notice and recordkeeping terms.[67] Ms. Kessler acknowledges, at least with respect to the late fees for reports of use, that they could be implemented either in the notice and recordkeeping regulations or in the license terms. *See* Kessler WDT at 20–23, 27–28. The Judges decline to adopt SoundExchange's proposals regarding the harmonization of licensee identification and the imposition of a late fee for reports of use. The evidence does not compel amendment of the current recordkeeping regulations; rather, these issues are more appropriately addressed in a future rulemaking proceeding.

(1) Identification of Licensees

SoundExchange asserted that harmonization of the identification of licensees can be accomplished by (i) requiring licensees to identify themselves on their statements of account and reports of use ''in exactly the same way [they are] identified on the corresponding notice of use . . . and that they cover the same scope of activity (*e.g.,* the same channels or stations),'' SX PFF at ¶ 568, Kessler WDT at 28; (ii) making the regulations clear that the ''Licensee'' is ''the *entity* identified on the notice of use, statement of account, and report of use and that each Licensee must submit its own notice of use, statement of account, and report of use,'' *id.* (emphasis in original); and (iii) requiring licensees to use an account number issued by SoundExchange. *Id.* at ¶ 571. Ms. Kessler testified that these proposals would allow SoundExchange to match to the requisite notice of use, statement of account, and report of use to the correct licensee more quickly and efficiently. Kessler WDT at 29; 4/20/10 Tr. at 461 (Kessler). She also claimed that, for ''little or no evident cost'' to licensees, their accounting and reporting efforts would be simplified by use of an account number. Kessler WDT at 29. SoundExchange also asserted that these proposals are included in the NAB/SoundExchange and CBI/SoundExchange Agreements. SX PFF at ¶ 569. In fact, neither Agreement requires use of an account number.

Live365 did not controvert SoundExchange's proposed findings of fact relating to the identification issue, nor did it stipulate to the proposed term. As the term is not agreed, the Judges treat it as a litigated term. SoundExchange's witness asserted, without evidence, that the cost to licensees of conforming their reports and using an assigned account number would be minimal. Kessler WDT at 29.

Conformity of reporting and use of an account number system, however, is not a feature of the WSA Agreements in evidence. McCrady WDT, Exs. 101–DP (NAB), 102–DP (Commercial Webcasters) and 103–DP (CBI). The CBI/SoundExchange Agreement requires that statements of account list the licensee's name as it appears on the notice of use, *see* § 380.23(f)(1), but it does not impose that requirement on reports of use. *Compare* McCrady Ex. 103–DP, section 5.2.2 *with* § 380.23(g).

If adopted in this proceeding, therefore, SoundExchange's proposal would create an inconsistency within the webcasting regulations. The Judges decline to adopt this proposal, but find that the issue would be more appropriately addressed in a future rulemaking proceeding.

(2) Late Fee for Reports of Use

SoundExchange sought imposition of a late fee of 1.5% for reports of use. The regulations currently require a late fee for untimely payments and statements of account. *See* 37 CFR 380.4(c). In support of this request, Ms. Kessler testified that there was widespread noncompliance with reporting requirements. She cited failure to file reports of use as well as late or ''grossly inadequate'' reports. Kessler WDT at 28. Ms. Kessler testified that noncompliance with the report of use and payment requirements significantly hamper SoundExchange's ability to make timely royalty distributions. Kessler WDT at 28; 4/20/10 Tr. at 458 (Kessler). SoundExchange also points to the inclusion of a late fee for untimely reports of use in the NAB/SoundExchange and CBI/SoundExchange Agreements as further support for its request. SX PFF at ¶ 564.

Live365 questioned SoundExchange's characterization of a payment as being useless without a report of use given that both the NAB/SoundExchange and CBI/SoundExchange Agreements contain reporting waivers. Live365 RCL at ¶ 20.

The Judges are not persuaded that a late fee for reports of use is necessary. None of the interactive agreements in evidence contains such a term. Live365 Exs. 17, 18; McCrady WDT, Exs.104–DR and 106–DR. Only the NAB/SoundExchange and CBI/SoundExchange Agreements contain the late fee; the parties did not include a late fee in the Sirius XM/SoundExchange Agreement.

SoundExchange failed to meet its burden with regard to this proposal; the Judges decline to adopt the proposed late fee terms.

C. Contested Terms for Noncommercial Webcasters

IBS proposed two new terms. The first is an exemption from the recordkeeping reporting requirements, or a permissive proxy fee *in lieu* of reporting, for noncommercial webcasters whose usage exceeds 15,914 ATH per month, but is less than 55,000 ATH per month. The second term proposed by IBS is an express authorization that SoundExchange ''may elect to accept collective payments on behalf of small and very small noncommercial webcasters.'' IBS PFF at ¶ 26.

The Judges decline to adopt IBS's proposed subcategories of noncommercial webcasters, rendering

[67] *See* n.66, *supra.* SoundExchange requested these same, or similar, changes in an earlier rulemaking, in which the Judges imposed census reporting for all services except those broadcasters paying no more than the minimum fee. *See* Comments of SoundExchange, Docket No. RM 2008–7, at 20–23 (Jan. 29, 2009). The requests were outside the scope of that rulemaking, which was to improve the reporting regulations in light of technological developments since promulgation of the interim regulation. The Judges deferred SoundExchange's requests for consideration in a future rulemaking. *See Notice and Recordkeeping for Use of Sound Recordings Under Statutory License (Final rule),* 74 FR 52418, 52422–23 (Oct. 13, 2009).

moot their proposed exception from reporting for small and very small noncommercial webcasters. Their proposal to create an *ad hoc* subcategory of noncommercial webcasters whose usage falls between 15,914 and 55,000 ATH suffers from the same defects as their proposal to create formal categories for small and very small noncommercial webcasters. IBS presented no evidence to support differential treatment for webcasters falling in this *ad hoc* subcategory. While there was evidence regarding the appropriateness and desirability of a proxy fee for *educational* noncommercial webcasters, there was no evidence presented by any party that the same is true for noncommercial webcasters other than educational webcasters (who may already take advantage of the CBI/SoundExchange Agreement).

The Judges decline to adopt IBS's second proposal. As the Judges do not recognize IBS's proposed subcategories, the second proposal is rendered moot.

VII. Determination and Order

Having fully considered the record, the Copyright Royalty Judges make the above Findings of Fact and Determination based on the record. The Judges issue the foregoing as a Final Determination. The Register of Copyrights may review the Judges' Final Determination for legal error in resolving a material issue of substantive copyright law. The Librarian shall cause the Judges' Final Determination, and any correction thereto by the Register, to be published in the **Federal Register** no later than the conclusion of the 60-day review period.

So ordered.

Dated: February 12, 2014.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

David R. Strickler,

Copyright Royalty Judge.

Jesse M. Feder,

Copyright Royalty Judge.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Final Regulations

■ In consideration of the foregoing, the Copyright Royalty Judges revise part 380 of title 37 of the Code of Federal Regulations to read as follows:

PART 380—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Subpart A—Commercial Webcasters and Noncommercial Webcasters

Sec.
380.1 General.
380.2 Definitions.
380.3 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.4 Terms for making payment of royalty fees and statements of account.
380.5 Confidential Information.
380.6 Verification of royalty payments.
380.7 Verification of royalty distributions.
380.8 Unclaimed funds.

Subpart B—Broadcasters

Sec.
380.10 General.
380.11 Definitions.
380.12 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.13 Terms for making payment of royalty fees and statements of account.
380.14 Confidential Information.
380.15 Verification of royalty payments.
380.16 Verification of royalty distributions.
380.17 Unclaimed funds.

Subpart C—Noncommercial Educational Webcasters

Sec.
380.20 General.
380.21 Definitions.
380.22 Royalty fees for the public performance of sound recordings and for ephemeral recordings
380.23 Terms for making payment of royalty fees and statements of account.
380.24 Confidential Information.
380.25 Verification of royalty payments.
380.26 Verification of royalty distributions.
380.27 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

Subpart A—Commercial Webcasters and Noncommercial Webcasters

§ 380.1 General.

(a) *Scope.* This subpart establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees as set forth in this subpart in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this subpart to transmission within the scope of such agreements.

§ 380.2 Definitions.

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

Aggregate Tuning Hours (ATH) means the total hours of programming that the Licensee has transmitted during the relevant period to all listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, less the actual running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a service transmitted one hour of programming to 10 simultaneous listeners, the service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's Aggregate Tuning Hours would equal 10.

Broadcaster is a type of Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Commercial Webcaster is a Licensee, other than a Noncommercial Webcaster, that makes eligible digital audio transmissions.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

Ephemeral Recording is a phonorecord created for the purpose of

facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114, and subject to the limitations specified in 17 U.S.C. 112(e).

Licensee is a person that has obtained a statutory license under 17 U.S.C. 114, and the implementing regulations, to make eligible nonsubscription transmissions, or noninteractive digital audio transmissions as part of a new subscription service (as defined in 17 U.S.C. 114(j)(8)) other than a Service as defined in § 383.2(h) of this chapter, or that has obtained a statutory license under 17 U.S.C. 112(e), and the implementing regulations, to make Ephemeral Recordings for use in facilitating such transmissions, but that is not—

(1) A Broadcaster as defined in § 380.11; or

(2) A Noncommercial Educational Webcaster as defined in § 380.21.

Noncommercial Webcaster is a Licensee that makes eligible digital audio transmissions and:

(1) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501),

(2) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted, or

(3) Is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.,* the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events, and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

Side Channel is a channel on the Web site of a Broadcaster which channel transmits eligible transmissions that are not simultaneously transmitted over the air by the Broadcaster.

§ 380.3 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* Royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114, and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) are as follows:

(1) *Commercial Webcasters.* For all digital audio transmissions, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Commercial Webcaster will pay a royalty of: $0.0019 per performance for 2011; $0.0021 per performance for 2012; $0.0021 per performance for 2013; $0.0023 per performance for 2014; and $0.0023 per performance for 2015.

(2) *Noncommercial Webcasters.* (i) For all digital audio transmissions totaling not more than 159,140 Aggregate Tuning Hours (ATH) in a month, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Noncommercial Webcaster will pay an annual per channel or per station performance royalty of $500 in 2011, 2012, 2013, 2014, and 2015.

(ii) For all digital audio transmissions totaling in excess of 159,140 Aggregate Tuning Hours (ATH) in a month, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Noncommercial Webcaster will pay a royalty of: $0.0019 per performance for 2011; $0.0021 per performance for 2012; $0.0021 per performance for 2013; $0.0023 per performance for 2014; and $0.0023 per performance for 2015.

(b) *Minimum fee*—(1) *Commercial Webcasters.* Each Commercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the period 2011–2015 during which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Commercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Commercial Webcasters, provided that a Commercial Webcaster shall not be required to pay more than $50,000 per calendar year in minimum fees in the aggregate (for 100 or more channels or stations). For each such Commercial Webcaster, the annual minimum fee described in this paragraph (b)(1) shall constitute the minimum fees due under both 17 U.S.C. 112(e)(4) and 114(f)(2)(B). Upon payment of the minimum fee, the Commercial Webcaster will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

(2) *Noncommercial Webcasters.* Each Noncommercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the period 2011–2015 during which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Noncommercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Noncommercial Webcasters. For each such Noncommercial Webcaster, the annual minimum fee described in this paragraph (b)(2) shall constitute the minimum fees due under both 17 U.S.C. 112(e)(4) and 114(f)(2)(B). Upon payment of the minimum fee, the Noncommercial Webcaster will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

(c) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of all Ephemeral Recordings used by the Licensee solely to facilitate transmissions for which it pays royalties shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.

§ 380.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Licensee shall make the royalty payments due under § 380.3 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is

designated as the Collective to receive statements of account and royalty payments from Licensees due under § 380.3 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized the Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments.* A Licensee shall make any payments due under § 380.3 on a monthly basis on or before the 45th day after the end of each month for that month. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any minimum payment due under § 380.3(b) by January 31 of the applicable calendar year, except that payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments and statements of account.* A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment and/or statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment and the related statement of account are received by the Collective.

(f) *Statements of account.* Any payment due under § 380.3 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation.

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.4 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (g)(1) of this section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with § 380.8.

(h) *Retention of records.* Books and records of a Licensee and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 380.5 Confidential Information.

(a) *Definition.* For purposes of this subpart, ''Confidential Information'' shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Licensee's statement of account pursuant to § 380.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.7;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties

during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114 before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.6 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.7 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.8 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Subpart B—Broadcasters

§ 380.10 General.

(a) *Scope.* This subpart establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions made by Broadcasters as

set forth herein in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Broadcasters as set forth herein in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

(b) *Legal compliance.* Broadcasters relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations not inconsistent with the rates and terms set forth herein.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and digital audio services shall apply in lieu of the rates and terms of this subpart to transmission within the scope of such agreements.

§ 380.11 Definitions.

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

Aggregate Tuning Hours means the total hours of programming that the Broadcaster has transmitted during the relevant period to all listeners within the United States from any channels and stations that provide audio programming consisting, in whole or in part, of Eligible Transmissions.

Broadcaster means an entity that:

(1) Has a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission;

(2) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings;

(3) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations; and

(4) Is not a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i).

Broadcaster Webcasts mean eligible nonsubscription transmissions made by a Broadcaster over the Internet that are not Broadcast Retransmissions.

Broadcast Retransmissions mean eligible nonsubscription transmissions made by a Broadcaster over the Internet that are retransmissions of terrestrial over-the-air broadcast programming transmitted by the Broadcaster through its AM or FM radio station, including ones with substitute advertisements or other programming occasionally substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained. For the avoidance of doubt, a Broadcast Retransmission does not include programming that does not require a license under United States copyright law or that is transmitted on an Internet-only side channel.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

Eligible Transmission shall mean either a Broadcaster Webcast or a Broadcast Retransmission.

Ephemeral Recording is a phonorecord created for the purpose of facilitating an Eligible Transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.,* the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the Broadcaster has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events, and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

Small Broadcaster is a Broadcaster that, for any of its channels and stations (determined as provided in § 380.12(c)) over which it transmits Broadcast Retransmissions, and for all of its channels and stations over which it transmits Broadcaster Webcasts in the aggregate, in any calendar year in which it is to be considered a Small Broadcaster, meets the following additional eligibility criteria:

(1) During the prior year it made Eligible Transmissions totaling less than 27,777 Aggregate Tuning Hours; and

(2) During the applicable year it reasonably expects to make Eligible Transmissions totaling less than 27,777 Aggregate Tuning Hours; provided that, one time during the period 2011–2015, a Broadcaster that qualified as a Small Broadcaster under the foregoing definition as of January 31 of one year, elected Small Broadcaster status for that year, and unexpectedly made Eligible Transmissions on one or more channels or stations in excess of 27,777 aggregate tuning hours during that year, may choose to be treated as a Small Broadcaster during the following year notwithstanding paragraph (1) of the definition of ''Small Broadcaster'' if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 27,777 aggregate tuning hours during that following year. As to channels or stations over which a Broadcaster transmits Broadcast Retransmissions, the Broadcaster may elect Small Broadcaster status only with respect to any of its channels or stations that meet all of the foregoing criteria.

§ 380.12 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* Royalties for Eligible Transmissions made pursuant to 17 U.S.C. 114, and the making of related ephemeral recordings pursuant to 17 U.S.C. 112(e), shall, except as provided in § 380.13(g)(3), be payable on a per-performance basis, as follows:

(1) 2011: $0.0017;

(2) 2012: $0.0020;

(3) 2013: $0.0022;

(4) 2014: $0.0023;

(5) 2015: $0.0025.

(b) *Ephemeral royalty.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Broadcaster during this license period and used solely by the Broadcaster to facilitate transmissions for which it pays royalties as and when provided in this

section is deemed to be included within such royalty payments and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting as set forth in § 380.3.

(c) *Minimum fee.* Each Broadcaster will pay an annual, nonrefundable minimum fee of $500 for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year or part of a calendar year during 2011–2015 during which the Broadcaster is a licensee pursuant to licenses under 17 U.S.C. 112(e) and 114, provided that a Broadcaster shall not be required to pay more than $50,000 in minimum fees in the aggregate (for 100 or more channels or stations). For the purpose of this subpart, each individual stream (*e.g.,* HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum, except that identical streams for simulcast stations will be treated as a single stream if the streams are available at a single Uniform Resource Locator (URL) and performances from all such stations are aggregated for purposes of determining the number of payable performances hereunder. Upon payment of the minimum fee, the Broadcaster will receive a credit in the amount of the minimum fee against any additional royalties payable for the same calendar year for the same channel or station. In addition, an electing Small Broadcaster also shall pay a $100 annual fee (the ''Proxy Fee'') to the Collective for the reporting waiver discussed in § 380.13(g)(2).

§ 380.13 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Broadcaster shall make the royalty payments due under § 380.12 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Broadcasters due under § 380.12 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) and 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Royalty Board designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments and reporting.* Broadcasters must make monthly payments where required by § 380.12, and provide statements of account and reports of use, for each month on the 45th day following the month in which the Eligible Transmissions subject to the payments, statements of account, and reports of use were made. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Broadcaster shall make any minimum payment due under § 380.12(b) by January 31 of the applicable calendar year, except that payment by a Broadcaster that was not making Eligible Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of said date but begins doing so thereafter shall be due by the 45th day after the end of the month in which the Broadcaster commences to do so.

(e) *Late fees.* A Broadcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by the Collective in compliance with applicable regulations by the due date. The amount of the late fee shall be 1.5% of a late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Broadcaster within 90 days regarding any noncompliance that is reasonably evident to the Collective.

(f) *Statements of account.* Any payment due under § 380.12 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Broadcaster or a duly authorized agent of the owner, if the Broadcaster is not a partnership or corporation;

(ii) A partner or delegee, if the Broadcaster is a partnership; or

(iii) An officer of the corporation, if the Broadcaster is a corporation.

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Broadcaster is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Broadcaster, or officer or partner, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Reporting by Broadcasters in General.* (1) Broadcasters other than electing Small Broadcasters covered by paragraph (g)(2) of this section shall submit reports of use on a per-performance basis in compliance with the regulations set forth in part 370 of this chapter, except that the following provisions shall apply notwithstanding the provisions of such part 370 of this chapter from time to time in effect:

(i) Broadcasters may pay for, and report usage in, a percentage of their programming hours on an Aggregate Tuning Hour basis as provided in paragraph (g)(3) of this section.

(ii) Broadcasters shall submit reports of use to the Collective on a monthly basis.

(iii) As provided in paragraph (d) of this section, Broadcasters shall submit reports of use by no later than the 45th day following the last day of the month to which they pertain.

(iv) Except as provided in paragraph (g)(3) of this section, Broadcasters shall submit reports of use to the Collective on a census reporting basis (*i.e.,* reports of use shall include every sound recording performed in the relevant month and the number of performances thereof).

(v) Broadcasters shall either submit a separate report of use for each of their stations, or a collective report of use covering all of their stations but identifying usage on a station-by-station basis;

(vi) Broadcasters shall transmit each report of use in a file the name of which includes:

(A) The name of the Broadcaster, exactly as it appears on its notice of use, and

(B) If the report covers a single station only, the call letters of the station.

(vii) Broadcasters shall submit reports of use with headers, as presently described in § 370.4(e)(7) of this chapter.

(viii) Broadcasters shall submit a separate statement of account corresponding to each of their reports of use, transmitted in a file the name of which includes:

(A) The name of the Broadcaster, exactly as it appears on its notice of use, and

(B) If the statement covers a single station only, the call letters of the station.

(2) On a transitional basis for a limited time in light of the unique business and operational circumstances currently existing with respect to Small Broadcasters and with the expectation that Small Broadcasters will be required, effective January 1, 2016, to report their actual usage in compliance with then-applicable regulations. Small Broadcasters that have made an election pursuant to paragraph (h) of this section for the relevant year shall not be required to provide reports of their use of sound recordings for Eligible Transmissions and related Ephemeral Recordings. The immediately preceding sentence applies even if the Small Broadcaster actually makes Eligible Transmissions for the year exceeding 27,777 Aggregate Tuning Hours, so long as it qualified as a Small Broadcaster at the time of its election for that year. In addition to minimum royalties hereunder, electing Small Broadcasters will pay to the Collective a $100 Proxy Fee to defray costs associated with this reporting waiver, including development of proxy usage data.

(3) Broadcasters generally reporting pursuant to paragraph (g)(1) of this section may pay for, and report usage in, a percentage of their programming hours on an Aggregate Tuning Hours basis, if:

(i) Census reporting is not reasonably practical for the programming during those hours, and

(ii) If the total number of hours on a single report of use, provided pursuant to paragraph (g)(1) of this section, for which this type of reporting is used is below the maximum percentage set forth below for the relevant year:

(A) 2011: 16%;

(B) 2012: 14%;

(C) 2013: 12%;

(D) 2014: 10%;

(E) 2015: 8%.

(iii) To the extent that a Broadcaster chooses to report and pay for usage on an Aggregate Tuning Hours basis pursuant to paragraph (g)(3) of this section, the Broadcaster shall

(A) Report and pay based on the assumption that the number of sound recordings performed during the relevant programming hours is 12 per hour;

(B) Pay royalties (or recoup minimum fees) at the per-performance rates provided in § 380.12 on the basis of paragraph (g)(3)(iii)(A) of this section;

(C) Include Aggregate Tuning Hours in reports of use; and

(D) Include in reports of use complete playlist information for usage reported on the basis of Aggregate Tuning Hours.

(h) *Election of Small Broadcaster Status.* To be eligible for the reporting waiver for Small Broadcasters with respect to any particular channel in a given year, a Broadcaster must satisfy the definition set forth in § 380.11 and must submit to the Collective a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by no later than January 31 of the applicable year. Even if a Broadcaster has once elected to be treated as a Small Broadcaster, it must make a separate, timely election in each subsequent year in which it wishes to be treated as a Small Broadcaster.

(i) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Broadcasters to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify and pay the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Broadcaster equally based upon information provided under the report of use requirements for Broadcasters contained in § 370.4 of this chapter and this subpart, except that in the case of electing Small Broadcasters, the Collective shall distribute royalties based on proxy usage data in accordance with a methodology adopted by the Collective's Board of Directors.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (g)(1) of this section within 3 years from the date of payment by a Broadcaster, such distribution may be first applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

(j) *Retention of records.* Books and records of a Broadcaster and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 380.14 Confidential Information.

(a) *Definition.* For purposes of this subpart, ''Confidential Information'' shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Broadcaster submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the

Collective with respect to verification of a Broadcaster's statement of account pursuant to § 380.15 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.16;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Broadcaster whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but not less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.15 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Broadcaster.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Broadcaster, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Board a notice of intent to audit a particular Broadcaster, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Broadcaster to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Broadcaster shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Broadcaster being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Broadcaster reasonably cooperates with the auditor to remedy promptly any factual error or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Broadcaster shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.16 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Board a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.17 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart,

the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Subpart C—Noncommercial Educational Webcasters

§ 380.20 General.

(a) *Scope.* This subpart establishes rates and terms, including requirements for royalty payments, recordkeeping and reports of use, for the public performance of sound recordings in certain digital transmissions made by Noncommercial Educational Webcasters as set forth herein in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Noncommercial Educational Webcasters as set forth herein in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

(b) *Legal compliance.* Noncommercial Educational Webcasters relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations not inconsistent with the rates and terms set forth herein.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and digital audio services shall apply in lieu of the rates and terms of this subpart to transmissions within the scope of such agreements.

§ 380.21 Definitions.

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

ATH or Aggregate Tuning Hours means the total hours of programming that a Noncommercial Educational Webcaster has transmitted during the relevant period to all listeners within the United States over all channels and stations that provide audio programming consisting, in whole or in part, of Eligible Transmissions, including from any archived programs, less the actual running time of any sound recordings for which the Noncommercial Educational Webcaster has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a Noncommercial Educational Webcaster transmitted one hour of programming to 10 simultaneous listeners, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a Noncommercial Educational Webcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

Eligible Transmission means an eligible nonsubscription transmission made by a Noncommercial Educational Webcaster over the Internet.

Ephemeral Recording is a phonorecord created for the purpose of facilitating an Eligible Transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Noncommercial Educational Webcaster means Noncommercial Webcaster (as defined in 17 U.S.C. 114(f)(5)(E)(i)) that:

(1) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings;

(2) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations;

(3) Is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(4) Is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.,* the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the Noncommercial Educational Webcaster has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings, including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

§ 380.22 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Minimum fee.* Each Noncommercial Educational Webcaster shall pay an annual, nonrefundable minimum fee of $500 (the ''Minimum Fee'') for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year it makes Eligible Transmissions subject to this subpart. For clarity, each individual stream (*e.g.,* HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum. In addition, a Noncommercial Educational Webcaster electing the reporting waiver

described in § 380.23(g)(1), shall pay a $100 annual fee (the ''Proxy Fee'') to the Collective.

(b) *Additional usage fees.* If, in any month, a Noncommercial Educational Webcaster makes total transmissions in excess of 159,140 Aggregate Tuning Hours on any individual channel or station, the Noncommercial Educational Webcaster shall pay additional usage fees (''Usage Fees'') for the Eligible Transmissions it makes on that channel or station after exceeding 159,140 total ATH at the following per-performance rates:

(1) 2011: $0.0017;

(2) 2012: $0.0020;

(3) 2013: $0.0022;

(4) 2014: $0.0023;

(5) 2015: $0.0025.

(6) For a Noncommercial Educational Webcaster unable to calculate actual total performances and not required to report ATH or actual total performances under § 380.23(g)(3), the Noncommercial Educational Webcaster may pay its Usage Fees on an ATH basis, provided that the Noncommercial Educational Webcaster shall pay its Usage Fees at the per-performance rates provided in paragraphs (b)(1) through (5) of this section based on the assumption that the number of sound recordings performed is 12 per hour. The Collective may distribute royalties paid on the basis of ATH hereunder in accordance with its generally applicable methodology for distributing royalties paid on such basis. In addition, and for the avoidance of doubt, a Noncommercial Educational Webcaster offering more than one channel or station shall pay Usage Fees on a per-channel or -station basis.

(c) *Ephemeral royalty.* The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Noncommercial Educational Webcaster and covered by this subpart is deemed to be included within the royalty payments set forth in paragraphs (a) and (b)(1) through (5) of this section and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting in § 380.3.

§ 380.23 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Noncommercial Educational Webcaster shall make the royalty payments due under § 380.22 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Noncommercial Educational Webcasters due under § 380.22 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc., should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in this paragraph (b)(2), such representatives shall file a petition with the Copyright Royalty Board designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Minimum fee.* Noncommercial Educational Webcasters shall submit the Minimum Fee, and Proxy Fee if applicable, accompanied by a statement of account, by January 31st of each calendar year, except that payment of the Minimum Fee, and Proxy Fee if applicable, by a Noncommercial Educational Webcaster that was not making Eligible Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of said date but begins doing so thereafter shall be due by the 45th day after the end of the month in which the Noncommercial Educational Webcaster commences doing so. Payments of minimum fees must be accompanied by a certification, signed by an officer or another duly authorized faculty member or administrator of the institution with which the Noncommercial Educational Webcaster is affiliated, on a form provided by the Collective, that the Noncommercial Educational Webcaster:

(1) Qualifies as a Noncommercial Educational Webcaster for the relevant year; and

(2) Did not exceed 159,140 total ATH in any month of the prior year for which the Noncommercial Educational Webcaster did not submit a statement of account and pay any required Usage Fees. At the same time the Noncommercial Educational Webcaster must identify all its stations making Eligible Transmissions and identify which of the reporting options set forth in paragraph (g) of this section it elects for the relevant year (provided that it must be eligible for the option it elects).

(d) *Usage fees.* In addition to its obligations pursuant to paragraph (c) of this section, a Noncommercial Educational Webcaster must make monthly payments of Usage Fees where required by § 380.22(b), and provide statements of account to accompany these payments, for each month on the 45th day following the month in which the Eligible Transmissions subject to the Usage Fees and statements of account were made. All monthly payments shall be rounded to the nearest cent.

(e) *Late fees.* A Noncommercial Educational Webcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by the Collective in compliance with the applicable regulations by the due date. The amount of the late fee shall be 1.5% of the late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, compounded monthly for the balance due, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use (as applicable) is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Noncommercial Educational Webcaster within 90 days regarding any noncompliance that is reasonably evident to the Collective.

(f) *Statements of account.* Any payment due under § 380.22 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) The name of the Noncommercial Educational Webcaster, exactly as it appears on the notice of use, and if the statement of account covers a single station only, the call letters or name of the station;

(2) Such information as is necessary to calculate the accompanying royalty payment as prescribed in this subpart;

(3) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(4) The handwritten signature of an officer or another duly authorized faculty member or administrator of the applicable educational institution;

(5) The printed or typewritten name of the person signing the statement of account;

(6) The date of signature;

(7) The title or official position held by the person signing the statement of account;

(8) A certification of the capacity of the person signing; and

(9) A statement to the following effect:

I, the undersigned officer or other duly authorized faculty member or administrator of the applicable educational institution, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Reporting by Noncommercial Educational Webcasters in general*—(1) *Reporting waiver.* In light of the unique business and operational circumstances currently existing with respect to Noncommercial Educational Webcasters, and for the purposes of this subpart only, a Noncommercial Educational Webcaster that did not exceed 55,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 55,000 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to pay to the Collective a nonrefundable, annual Proxy Fee of $100 in lieu of providing reports of use for the calendar year pursuant to the regulations at § 370.4 of this chapter. In addition, a Noncommercial Educational Webcaster that unexpectedly exceeded 55,000 total ATH on one or more channels or stations for more than one month during the immediately preceding calendar year may elect to pay the Proxy Fee and receive the reporting waiver described in this paragraph (g)(1) during a calendar year, if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 55,000 total ATH during any month of that calendar year. The Proxy Fee is intended to defray the Collective's costs associated with this reporting waiver, including development of proxy usage data. The Proxy Fee shall be paid by the date specified in paragraph (c) of this section for paying the Minimum Fee for the applicable calendar year and shall be accompanied by a certification on a form provided by the Collective, signed by an officer or another duly authorized faculty member or administrator of the applicable educational institution, stating that the Noncommercial Educational Webcaster is eligible for the Proxy Fee option because of its past and expected future usage and, if applicable, has implemented measures to ensure that it will not make excess Eligible Transmissions in the future.

(2) *Sample-basis reports.* A Noncommercial Educational Webcaster that did not exceed 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 159,140 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to provide reports of use on a sample basis (two weeks per calendar quarter) in accordance with the regulations at § 370.4 of this chapter, except that, notwithstanding § 370.4(d)(2)(vi), such an electing Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances and may in lieu thereof provide channel or station name and play frequency. Notwithstanding the foregoing, a Noncommercial Educational Webcaster that is able to report ATH or actual total performances is encouraged to do so. These reports of use shall be submitted to the Collective no later than January 31st of the year immediately following the year to which they pertain.

(3) *Census-basis reports.* If any of the following three conditions is satisfied, a Noncommercial Educational Webcaster must report pursuant to this paragraph (g)(3):

(i) The Noncommercial Educational Webcaster exceeded 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year;

(ii) The Noncommercial Educational Webcaster expects to exceed 159,140 total ATH for any individual channel or station for any calendar month in the applicable calendar year; or

(iii) The Noncommercial Educational Webcaster otherwise does not elect to be subject to paragraphs (g)(1) or (2) of this section. A Noncommercial Educational Webcaster required to report pursuant to paragraph (g)(3) of this section shall provide reports of use to the Collective quarterly on a census reporting basis (*i.e.,* reports of use shall include every sound recording performed in the relevant quarter), containing information otherwise complying with applicable regulations (but no less information than required by § 370.4 of this chapter), except that, notwithstanding § 370.4(d)(2)(vi), such a Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances, and may in lieu thereof provide channel or station name and play frequency, during the first calendar year it reports in accordance with paragraph (g)(3) of this section. For the avoidance of doubt, after a Noncommercial Educational Webcaster has been required to report in accordance with paragraph (g)(3) of this section for a full calendar year, it must thereafter include ATH or actual total performances in its reports of use. All reports of use under paragraph (g)(3) of this section shall be submitted to the Collective no later than the 45th day after the end of each calendar quarter.

(h) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Noncommercial Educational Webcasters to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify and pay the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Noncommercial Educational Webcaster equally based upon the information provided under the report of use requirements for Noncommercial Educational Webcasters contained in § 370.4 of this chapter and this subpart, except that in the case of Noncommercial Educational Webcasters that elect to pay a Proxy Fee in lieu of providing reports of use pursuant to paragraph (g)(1) of this section, the Collective shall distribute the aggregate royalties paid by electing Noncommercial Educational Webcasters based on proxy usage data in accordance with a methodology adopted by the Collective's Board of Directors.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (h)(1) of this section within 3 years from the date of payment by a Noncommercial Educational Webcaster, such distribution may first be applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

(i) *Server logs.* Noncommercial Educational Webcasters shall retain for a period of no less than three full calendar years server logs sufficient to substantiate all information relevant to eligibility, rate calculation and reporting under this subpart. To the extent that a third-party Web hosting or service

provider maintains equipment or software for a Noncommercial Educational Webcaster and/or such third party creates, maintains, or can reasonably create such server logs, the Noncommercial Educational Webcaster shall direct that such server logs be created and maintained by said third party for a period of no less than three full calendar years and/or that such server logs be provided to, and maintained by, the Noncommercial Educational Webcaster.

(ii) [Reserved]

§ 380.24 Confidential Information.

(a) *Definition.* For purposes of this subpart, ''Confidential Information'' shall include the statements of account and any information contained therein, including the amount of Usage Fees paid, and any information pertaining to the statements of account reasonably designated as confidential by the Noncommercial Educational Webcaster submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to Confidential Information;

(2) An independent Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Noncommercial Educational Webcaster's statement of account pursuant to § 380.25 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.26;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Noncommercial Educational Webcaster whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.25 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Noncommercial Educational Webcaster.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Noncommercial Educational Webcaster, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Board a notice of intent to audit a particular Noncommercial Educational Webcaster, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Noncommercial Educational Webcaster to be audited. Any such audit shall be conducted by an independent Qualified Auditor identified in the notice and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Noncommercial Educational Webcaster shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Noncommercial Educational Webcaster being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Noncommercial Educational Webcaster reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Noncommercial Educational Webcaster shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.26 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Board a

notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.27 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: February 12, 2014.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved By:

James H. Billington,

Librarian of Congress.

[FR Doc. 2014–08664 Filed 4–24–14; 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 1100, 1140, and 1143

Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1100, 1140, and 1143

[Docket No. FDA–2014–N–0189]

RIN 0910–AG38

Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to deem products meeting the statutory definition of ''tobacco product,'' except accessories of a proposed deemed tobacco product, to be subject to the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). The Tobacco Control Act provides FDA authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and any other tobacco products that the Agency by regulation deems to be subject to the law. Option 1 of the proposed rule would extend the Agency's ''tobacco product'' authorities in the FD&C Act to all other categories of products, except accessories of a proposed deemed tobacco product, that meet the statutory definition of ''tobacco product'' in the FD&C Act. Option 2 of the proposed rule would extend the Agency's ''tobacco product'' authorities to all other categories of products, except premium cigars and the accessories of a proposed deemed tobacco product, that meet the statutory definition of ''tobacco product'' in the FD&C Act. FDA also is proposing to prohibit the sale of ''covered tobacco products'' to individuals under the age of 18 and to require the display of health warnings on cigarette tobacco, roll-your own tobacco, and covered tobacco product packages and in advertisements. FDA is taking this action to address the public health concerns associated with the use of tobacco products.

DATES: Submit either electronic or written comments on the proposed rule by July 9, 2014. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (the PRA) by May 27, 2014, (see the ''Paperwork Reduction Act of 1995'' section).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0189 and/or Regulatory Information Number (RIN) 0910–AG38, by any of the following methods, except that comments on information collection issues under the PRA must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name, Docket No. FDA–2014–N–0189, and RIN 0910–AG38 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section.

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

FOR FURTHER INFORMATION CONTACT: Gerie Voss, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, *CTPRegulations@fda.hhs.gov.*

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Executive Summary

Purpose of the Proposed Rule

Cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco were immediately covered by FDA's tobacco product authorities in chapter IX of the FD&C Act (21 U.S.C. 387 through 387u) when the Tobacco Control Act went into effect. For other kinds of tobacco products, FDA has authority to issue regulations to bring

them under the law by ''deeming'' them to be subject to such authorities. Consistent with the statute, once a tobacco product is deemed, FDA may put in place ''restrictions on the sale and distribution of a tobacco product,'' including age-related access restrictions and advertising and promotion restrictions, if FDA determines the restrictions are appropriate for the protection of the public health. The proposed rule has two purposes: (1) To deem products that meet the definition of ''tobacco product'' under the law except accessories of a proposed deemed tobacco product and subject them to the tobacco control authorities in the FD&C Act and (2) to apply specific provisions that are appropriate for the protection of the public health to deemed tobacco products. To satisfy these purposes, FDA is proposing two options (Option 1 and Option 2), which would provide two alternatives for the scope of the deeming provisions and, consequently, the application of the additional specific provisions.

Summary of the Major Provisions of the Regulatory Action

The proposed rule has two main sections: (1) Deeming provisions and (2) additional provisions to protect public health.

Deeming Provisions—Option 1 for the proposed rule would deem all products meeting the statutory definition of ''tobacco product'' except accessories of a proposed deemed tobacco product to be subject to FDA's tobacco product authorities under chapter IX of the FD&C Act. FDA considers accessories of proposed deemed products to be those items that are not included as part of a finished tobacco product or intended or expected to be used by consumers in the consumption of a tobacco product, and we expect that they will not have a significant impact on the public health. In addition, FDA considers accessories to be those items that may be used in the storage or personal possession of a proposed deemed product. Therefore, items such as hookah tongs, bags, cases, charcoal burners and holders, as well as cigar foil cutters, humidors, carriers, and lighters would be considered accessories and would not fall within the scope of this proposed rule. Section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), as amended by the Tobacco Control Act, defines the term ''tobacco product'' to mean ''any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).'' [1] Products that meet the statutory definition of ''tobacco products'' can include currently marketed products such as certain dissolvables, gels, hookah tobacco, electronic cigarettes, cigars, and pipe tobacco. Components and parts of tobacco products, but not their related accessories, would also be included in the scope of this proposed rule. Components and parts are included as part of a finished tobacco product or intended for consumer use in the consumption of a tobacco product. Components and parts that would be covered under this proposal include those items sold separately or as part of kits sold or distributed for consumer use or further manufacturing or included as part of a finished tobacco product. Such examples would include air/smoke filters, tubes, papers, pouches, or flavorings used for any of the proposed deemed tobacco products (such as flavored hookah charcoals and hookah flavor enhancers) or cartridges for e-cigarettes. The proposed rule also deems any future tobacco products that meet the statutory definition of ''tobacco product'' except accessories of such product to be subject to FDA's authorities under chapter IX of the FD&C Act. For example, FDA envisions that there could be tobacco products developed in the future that provide nicotine delivery (e.g., via dermal or buccal absorption), similar to currently marketed medicinal nicotine products, but which are not marketed for therapeutic purposes. Such products would be ''tobacco products'' and subject to FDA's chapter IX authorities should the deeming rule be finalized.

FDA is also proposing a second option to deem only a subset of cigars (i.e., to exclude from the scope of this proposed rule certain cigars that we refer to as ''premium cigars''). With respect to current products, while FDA recognizes that all cigars are harmful and potentially addictive, it has been suggested that different kinds of cigars may have the potential for varying effects on public health, based on possible differences in their effects on dual use, youth initiation and frequency of use by youth and young adults. Accordingly, FDA is seeking comment on these options to determine whether all cigars should be subject to deeming and what provisions of the proposed rule may be appropriate or not appropriate for different kinds of cigars.

In addition, FDA realizes that there are distinctions in the hazards presented by various nicotine-delivering products. Some have advanced views that certain new tobacco products that are noncombustible (such as e-cigarettes) may be less hazardous than combustible products given the carcinogens in smoke and the dangers of secondhand smoke from combustible products. Accordingly, FDA is seeking comment in this proposed rule as to how e-cigarettes should be regulated based on the continuum of nicotine-delivering products. We welcome comment on how to implement the provisions in the FD&C Act with respect to e-cigarettes. We also welcome any health and behavioral data about the effects of using e-cigarettes.

Once finalized, products deemed under this rule will be subject to the same FD&C Act provisions that cigarettes, roll-your-own tobacco, and smokeless tobacco are subject to, with respect to the following: (1) Enforcement action against products determined to be adulterated and misbranded; (2) required submission of ingredient listing and reporting of harmful and potentially harmful constituents (HPHCs) for all tobacco products; (3) required registration and product listing for all tobacco products; (4) prohibition against use of modified risk descriptors (e.g., ''light,'' ''low,'' and ''mild'' descriptors) and claims unless FDA issues an order permitting their use; (5) prohibition on the distribution of free samples (same as for cigarettes); and (6) premarket review requirements. These actions would improve the public health by affording FDA critical information regarding the health risks of such products, preventing new products from entering the market if they are not appropriate for the protection of public health or found substantially equivalent to an identified predicate product, and reducing the use of misleading claims and descriptors about the relative risk of tobacco products, which may lead consumers to initiate tobacco product use or to continue using tobacco when they would otherwise quit.

Additional Provisions—In addition to the provisions in the FD&C Act that would apply automatically if the proposed products are deemed, FDA has the authority to invoke its other authorities under the Tobacco Control Act in regulating these products. At this time, under section 906(d) of the FD&C Act (21 U.S.C. 387f(d)), FDA proposes to apply three additional provisions to covered tobacco products: (1) Requirement for a minimum age of purchase; (2) health warnings for

[1] FDA notes that products falling within the FD&C Act's definition of ''tobacco product'' may not be considered tobacco products for Federal excise tax purposes (see 26 U.S.C. 5702(c)).

product packages and advertisements (which FDA is also proposing to apply to cigarette tobacco and roll-your-own tobacco); and (3) prohibition of vending machine sales, unless the vending machine is located in a facility where the retailer ensures that individuals under 18 years of age are prohibited from entering at any time. The term ''covered tobacco products'' would be defined as those products deemed to be subject to the FD&C Act under section 1100.2 of title 21 of the Code of Federal Regulations (CFR), other than a component or part that does not contain tobacco or nicotine.

Request for Public Comment—In addition to seeking comment on the overall proposed rule, FDA is specifically seeking comment on the application of the proposed rule to certain products or in certain circumstances, including the following:

1. As noted previously, given that different kinds of cigars may have the potential for varying effects on public health, FDA is proposing two options for the categories of cigars that would be covered by this rule. FDA is specifically seeking comment on whether all cigars should be subject to deeming and what provisions of the proposed rule may be appropriate or not appropriate for different kinds of cigars.

2. FDA is aware that some tobacco products, such as e-cigarettes and certain cigars, are being marketed with characterizing flavors, and that these flavors can be especially attractive to youth. The prohibition against characterizing flavors established in the Tobacco Control Act applies to cigarettes only. FDA requests comments on the characteristics or other factors it should consider in determining whether a particular tobacco product is a ''cigarette'' as defined in section 900(3) of the FD&C Act and, consequently, subject to the prohibition against characterizing flavors, despite being labelled as a little cigar or other non-cigarette tobacco product. FDA is also seeking research regarding the long-term effects of flavored tobacco product usage including data as to the likelihood of whether users of flavored tobacco products initiate cigarette usage and/or become dual users with cigarettes.

3. Also as noted in this document, some have advanced views that certain new tobacco products that are noncombustible (such as e-cigarettes) may be less hazardous, at least in certain respects, than combustible products given the carcinogens in smoke and the dangers of secondhand smoke. FDA also notes the increase in e-cigarette use by youth and the availability of fruit and candy-flavored e-cigarette liquid. We do not currently have sufficient data about these products to determine what effects e-cigarettes have on the public health. Accordingly, FDA is seeking comment in this proposed rule as to how such products should be regulated. We particularly request comment on behavioral data related to co-use of e-cigarettes and more traditional tobacco products, including data on the effects of e-cigarettes on the initiation and continuation of use of other tobacco products.

4. FDA is proposing to deem those products meeting the definition of ''tobacco product'' in section 201(rr) of the FD&C Act, except the accessories of proposed deemed tobacco products to be subject to chapter IX of the FD&C Act. FDA is seeking comment on how its proposal to exclude accessories from the scope of the deeming rule would impact the public health. We also ask for comments, including supporting facts, research, and other evidence, as to whether FDA should define components and parts of tobacco products and how those items might be distinguished from accessories of tobacco products.

5. The statute establishes a ''substantial equivalence'' (SE) pathway for a new tobacco product to enter the market if it is substantially equivalent to a ''predicate product,'' meaning a product commercially marketed in the United States as of February 15, 2007. FDA is aware of new product category entrants into the market after the February 15, 2007, reference date and that the SE pathway may not be available to these newer products. Because this date is written into the statute, we do not believe that we have the authority to amend it with respect to e-cigarettes or other products. FDA is proposing to extend the compliance period for submitting a marketing application under this pathway to 24 months following the effective date of a final rule. FDA is also proposing a 24-month compliance period for the submission of premarket tobacco applications (PMTAs). In addition, we intend to continue the compliance policy pending review of marketing applications if those applications are submitted within the 24 months after the final rule's effective date. FDA is specifically seeking comment on whether and, if so, how FDA should consider a different regulatory mechanism for newer proposed deemed tobacco products that cannot, as a practical matter, use the SE pathway.

6. FDA recognizes that there may be the potential for varying levels of harm and negative effects on public health for different categories of tobacco products. FDA is considering whether it might be appropriate for the protection of the public health to stagger the compliance dates for certain provisions for different categories of products. FDA seeks comment on this issue.

7. FDA recognizes that some of the proposals in this document might impose significant costs on certain manufacturers, consistent with current practice under Federal Trade Commission (FTC) consent decrees with several large manufacturers, including the requirement to register and list products and the requirement for cigar manufacturers to randomly distribute and rotate warning statements on packages and advertisements, respectively. FDA seeks comment and data on alternative approaches for manufacturers to satisfy these requirements that would reduce costs for manufacturers yet would still be appropriate for the protection of the public health. We request comment on whether and how we should revise our existing guidance to provide for flexibility in this area, while still being appropriately protective of the public health.

8. Some have advanced views that certain new tobacco products that are non-combustible (such as e-cigarettes) may be less hazardous, at least in certain respects, than combustible products given the carcinogens in smoke and the dangers of secondhand smoke. Nevertheless, all tobacco products containing nicotine are addictive, and FDA is not currently aware of any tobacco products that do not contain nicotine. Thus, FDA is seeking comments, including supporting research, facts, and other evidence, as to whether all tobacco products should be required to carry an addiction warning and, if yes, whether different warnings should be placed on different categories of products.

9. FDA is not proposing the fifth FTC warning (Tobacco Use Increases The Risk Of Infertility, Stillbirth And Low Birth Weight), because although cigarette smoke causes these health effects (and cigar smoke is similar to cigarette smoke), the Agency is not aware of studies specifically linking cigars to these reproductive effects. FDA requests comment on its proposal to require the use of only four of the five current FTC warnings for cigars.

10. FDA is proposing that any cigar that is sold in product packaging bear a health warning that would be randomly displayed and distributed on cigar product packages and rotated in advertisements. In addition, FDA is proposing that warnings for cigars sold individually and not within product

packages all be included on a sign located at the point-of-sale at each cash register in any retail establishment where such cigars are sold. FDA requests comment as to whether all cigars sold without product packaging, including those cigars we refer to as ''premium cigars,'' should be exempt from the warning requirements.

11. As explained in the Initial Regulatory Flexibility Analysis, FDA finds that this rule would have a significant economic impact on a substantial number of small entities. FDA is seeking comments about any unique challenges faced by small manufacturers of proposed deemed tobacco products and how they should be addressed.

12. FDA is also seeking comment on the proposed addictiveness warning and any potential for consumer confusion, the proposed size of the health warnings that would be required by this rule, and on the role that the size of such warnings has in helping to convey consumer information.

13. FDA is seeking comment on the relative merits of Option 1 versus Option 2, taking into account what is appropriate for the public health, including possible benefits to the public health or possible negative public health consequences of adopting one Option or the other.

Effective Dates—The deeming provisions and age restrictions would be effective 30 days from the date of publication of the final rule. The proposed health warning requirements would be effective 24 months after the final rule is issued. In addition, manufacturers could continue to introduce into domestic commerce existing inventory that may not contain the warning statements required under the final rule for an additional 30 days after the health warnings take effect.

Compliance Dates for PMTAs and SE Reports—As stated previously, we understand that, for some products, there may not be predicate products that were on the market as of February 15, 2007, to which to claim substantial equivalence. This may be particularly true for e-cigarettes and similar novel products. For this reason, we are proposing that these manufacturers who cannot use the SE pathway submit PMTAs to FDA no later than 24 months following the effective date of the final rule. We are also proposing a 24-month compliance period for the submission of SE reports. Therefore, FDA does not intend to initiate enforcement action against products on the market for failing to have made an appropriate submission until 24 months following the effective date of the final rule. If a manufacturer submits a PMTA or SE application for its affected products within the 24-month time frame, FDA does not intend to initiate action against those products for failing to have a marketing authorization unless and until such a time as we have responded to the application.

Costs and Benefits

The proposed rule consists of two coproposals, Option 1 and Option 2. The proposed Option 1 deems all products meeting the statutory definition of ''tobacco product,'' except accessories of a proposed deemed tobacco product, to be subject to chapter IX of the FD&C Act. Option 1 also proposes additional provisions that would apply to proposed deemed products as well as to certain other tobacco products. The other coproposal, Option 2, is the same as Option 1 except that it exempts premium cigars. The proposed deeming action directly requires proposed deemed ''tobacco products'' to comply with the substantive requirements of chapter IX of the FD&C Act and its implementing regulations. We expect that asserting our authority over these tobacco products will enable us to take further regulatory action in the future as appropriate; those actions will have their own costs and benefits and would, as is the case with all rulemaking, be subject to notice and comment.

The proposed rule would generate some direct benefits by providing information to consumers about the risks and characteristics of tobacco products, which may result in consumers reducing their use of cigars and other tobacco products or engaging in compensatory health behaviors. Other potential benefits follow from premarket requirements, which could prevent more harmful products from appearing on the market and worsening the health effects of tobacco product use. The proposed rule would impose costs in the form of registration, submission, labeling, and other requirements; other likely costs are not quantifiable based on current data. The quantified costs of the proposed rule are shown in Table 1A.

TABLE 1A—SUMMARY OF QUANTIFIED COSTS OVER 20 YEARS

	Lower bound (3%)	Primary (3%)	Upper bound (3%)	Lower bound (7%)	Primary (7%)	Upper bound (7%)
Present Value Option 1	365.2	592.0	1,010.1	281.4	467.6	810.2
Present Value Option 2	304.0	476.4	779.2	233.8	375.0	622.6
Annualized Value Option 1	23.8	38.6	65.9	24.8	41.2	71.5
Annualized Value Option 2	19.8	31.1	50.8	20.6	33.1	54.9

I. Legal Authority

The Tobacco Control Act was enacted on June 22, 2009, amending the FD&C Act and providing FDA with the authority to regulate tobacco products (Pub. L. 111–31). Specifically, section 101(b) of the Tobacco Control Act amends the FD&C Act by adding a new chapter that provides FDA with tools to regulate tobacco products. Section 901 of the FD&C Act (21 U.S.C. 387a), as amended by the Tobacco Control Act, states that the new chapter in the FD&C Act (Chapter IX—Tobacco Products) applies ''to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco and to any other tobacco products that the Secretary [of Health and Human Services] by regulation deems to be subject to this chapter.'' Under the statute, to extend FDA's ''tobacco product'' authorities to other tobacco products not specifically enumerated in the statute, FDA must issue a regulation deeming them to be subject to the FD&C Act. With Option 1 of this proposed rule, FDA is proposing to deem all products meeting the statutory definition of ''tobacco product'' except accessories of a proposed deemed tobacco product to be subject to the FD&C Act. Option 2 would propose to deem a certain subset of cigars, as well as other products meeting the definition of ''tobacco product,'' but excluding the accessories of a proposed deemed tobacco product. Section 201(rr) of the FD&C Act, as amended by the Tobacco Control Act, defines the term ''tobacco product'' to mean ''any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a

tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product)'' that is not a drug, device, or combination product under the FD&C Act. This proposed rule would extend FDA's ''tobacco product'' authorities to products that meet the statutory definition of ''tobacco product'' in section 201(rr) of the FD&C Act (including the components and parts of a tobacco product), except the accessories of a tobacco product.

Section 903 of the FD&C Act provides that a tobacco product is misbranded unless ''the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—. . . (B) a brief statement of—(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications.'' Under section 906(d)(1) of the FD&C Act, FDA may require restrictions on the sale and distribution of a tobacco product, if the Agency determines that ''such regulation would be appropriate for the protection of the public health.'' The finding as to whether ''such regulation would be appropriate for the protection of the public health shall be determined with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account—(A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and (B) the increased or decreased likelihood that those who do not use tobacco products will start using such products.''

Based on the available data on the addictiveness of nicotine (as discussed in section V.A), the known adverse health effects of some of the products covered by this proposed rule, such as certain cigars and waterpipes, the likelihood that users of these products could co-use or migrate to other tobacco products like cigarettes, and the risk that failure to act will reinforce consumers' existing confusion and misinformation about these products' safety or lack of harmfulness, FDA believes that the sale and distribution restrictions the Agency is proposing—minimum age and identification requirements (including vending machine requirements) and health warning requirements—meet the public health standard set forth in section 906(d) of the FD&C Act. Specifically, FDA has concluded that the restrictions would be appropriate for the protection of the public health with respect to the risks and benefits to the population as a whole, including the increased likelihood that existing users will quit using tobacco products and the decreased likelihood that new users will initiate tobacco product use. This determination is made on the basis of several factors. First, the available data on the addictiveness of nicotine suggests the adolescent brain is more vulnerable to developing nicotine dependence than the adult brain, that exposure to substances such as nicotine can disrupt brain development and have long-term consequences on executive cognitive function and on the risk of developing a substance abuse disorder and various mental health problems as an adult (Ref. 1), and this exposure to nicotine can also have long-term results on decreasing attention performance and increasing impulsivity which could promote the maintenance of nicotine use behavior (id.). Second, some of the products covered by this rule, such as combustible products like cigars, pipes, and waterpipes, are known causes of adverse health effects, including certain cancers and heart disease (see section V.B). Third, there is the potential for users of products covered by this rule to migrate to cigarettes or other currently regulated products, and evidence shows extensive co-use. For example, in 2012, 32 percent of high school tobacco users had smoked cigarettes and cigars in the past 30 days (Ref. 2). Current cigarette smokers are also more likely to have been waterpipe and e-cigarette users than non-smokers (Ref. 3). In 2012, 80.5 percent of current high school e-cigarette users reported current conventional cigarette smoking (Ref. 4). We believe that if this rulemaking is finalized, its provisions may lead to a decline in youth initiation for covered products, such as waterpipes and e-cigarettes. If use of those products tends to lead to use of traditional cigarettes, this rule should avert that cigarette usage. Finally, there is the risk that failure to act will reinforce consumers' existing confusion and misinformation about these products' safety or lack of harmfulness.

II. Background for Deeming All Tobacco Products To Be Subject to the FD&C Act

Adolescence is the peak time for tobacco product use initiation and experimentation (Ref. 5). In recent years, new types of tobacco products, sometimes referred to as ''novel tobacco products,'' have become an increasing concern to public health due, in part, to their appeal to youth and young adults. Currently, non-regulated tobacco products come in many forms, including electronic cigarettes, nicotine gels, and certain dissolvable tobacco products (i.e., those dissolvable products that do not currently meet the definition of ''smokeless tobacco'' in section 900(18) of the FD&C Act (21 U.S.C. 387(18)) because they do not contain cut, ground, powdered, or leaf tobacco and instead contain nicotine extracted from tobacco). These products are widely available. Electronic cigarettes (or e-cigarettes), for example, are widely available in retail outlets such as kiosks in shopping malls and on the Internet and their online popularity has surpassed that of snus and nicotine replacement therapies which have been on the market far longer than e-cigarettes (Refs. 6 and 7).

Additionally, young adults often mistakenly think non-cigarette tobacco products are safe alternatives to cigarettes (Ref. 8). Research has shown that youth are also particularly vulnerable to the appeal of novel tobacco products (Refs. 9, 10, 11, and 12). Because of their addictiveness and the marketing and sale of these products (and their subsequent use by youth), some non-cigarette tobacco products can introduce youth into a lifetime of addicted tobacco product use and related harms, including premature death (Refs. 13, 14, 15, and 16).

Further, many of the products proposed to be covered by this rule are offered in fruit and candy flavors, such as chocolate and grape flavors, making them especially attractive to children and young adults. For example, from 2010 to 2012, one cigar company introduced grape, white grape, and blueberry flavors to its line of little cigars and cigarillos (Ref. 17). In 2012, a manufacturer of nicotine solutions for e-cigarettes introduced Mint Mocha and Spiced Apple Cider flavors for their e-cigarette solutions (id.).

The first nationally representative study (derived from more than 4,000 young adults aged 18 to 34) to examine the prevalence of the use of flavored tobacco products following the 2009 FDA flavor ban in cigarettes found that 20 percent of tobacco users in the study currently use a flavored tobacco product (Ref.17). The most common flavored products include flavored pipe tobacco, little cigars, and hookah tobacco (id.). Research has shown that flavored product use is higher among 18-to-24-year-olds than 25-to-34-year-olds, and that sugar preference is strongest among youth and young adults and declines with age (id.). Such findings indicate that flavored product use may influence tobacco-use patterns in young adulthood, a critical period when

lifelong patterns of tobacco use are often established (Ref. 17 citing Ref. 18). See section V.A for further discussion regarding the impact of nicotine on youth and young adults. See also section V.B for a description of health risks associated with the proposed deemed tobacco products. Given this initial data regarding the increased prevalence of flavored tobacco products following the 2009 flavored cigarette ban, FDA seeks comments, data, and research regarding the following:

- Aside from this proposed rule, what additional actions, if any, should FDA take to address the sale of candy and/or fruit-flavored tobacco products to children and young adults? For example, what data should FDA request manufacturers submit in new tobacco product applications to establish that flavorants either do not raise different questions of public health, in the case of SE reports, or are appropriate for the protection of public health in the case of premarket tobacco product applications?
- What is the likelihood that individuals who engage in flavored tobacco product use will initiate cigarette use and/or become dual users with cigarettes?
- The prohibition against characterizing flavors established in the Tobacco Control Act applies to cigarettes only. Consequently, when this regulation is finalized and other tobacco products are deemed subject to FDA's tobacco product authority, the statutory prohibition against characterizing flavors will not apply automatically to those products. However, once they are deemed, FDA may establish a product standard prohibiting flavors in those products. FDA requests information and data that would support establishing such a standard.

FDA is concerned that manufacturers may be labeling, packaging, or otherwise representing tobacco products that are, in fact, cigarettes to be little cigars, cigarillos, or similar products in order to evade the prohibition against characterizing flavors in cigarettes. FDA requests comments on the characteristics or other factors it should consider in determining whether a particular tobacco product is a ''cigarette'' as defined in section 900(3) of the FD&C Act and, consequently, subject to the prohibition against characterizing flavors, despite being labelled as a little cigar or other non-cigarette tobacco product.

Moreover, efforts to improve public health by reducing the prevalence of cigarette smoking may be undermined by tobacco users switching to other tobacco products. The scientific evidence remains as yet unclear what the public health impact will be from products such as e-cigarettes. More youth who report they would never have used a tobacco product are experimenting with e-cigarettes (Ref. 4, 18); the number of cigarette smokers who actually quit tobacco product use with e-cigarettes is low (Ref. 19); current cigarette users experimenting with e-cigarettes have become dual users (id.)—with unknown health impacts. Although the health consequences of e-cigarettes are not well understood because of their relatively new entrance into the market, the health concerns and addictive properties of other tobacco products have been widely recognized in Surgeon General Reports and scientific literature.

When similar products are taxed or regulated differently, substitutions across products occur. For example, industry documents indicate that tobacco firms have been aware of disparities in the legal treatment of cigarettes and cigars and have made efforts to develop small cigars that cigarette smokers would smoke (Refs. 20 and 21). Sales of small cigars quadrupled in the early 1970s, when cigars were taxed at a much lower rate than cigarettes and cigarette (but not small cigar) advertisements were banned from television and radio (Ref. 21).[2]

This substitution is evidenced in the recent trends regarding cigarette consumption compared to the use of other combustible tobacco products (e.g., small and large cigars, pipe tobacco, and roll-your-own tobacco). For example, the Centers for Disease Control and Prevention (CDC) reported a 32.8 percent decrease in cigarette consumption between 2000 and 2011, while the consumption of non-cigarette combustible products increased from 15.2 billion ''cigarette equivalents'' (i.e., small cigars and large cigars, and per-cigarette equivalents for pipe tobacco and roll-your-own tobacco) to 33.8 billion—a 123.1 percent increase over the same time period (Ref. 22). Pipe tobacco consumption during this period increased 482.1 percent, and consumption of large cigars increased 233.1 percent (id.). This research suggests that recent changes in consumption of non-cigarette combustible products, particularly increases in large cigar and pipe tobacco use, are associated with a decline in cigarette consumption, and indicate that certain cigarette smokers may switch to non-cigarette combustible products (id. at 567). While researchers posited that this change in prevalence rates is likely due to the lower taxes (and ultimately lower cost to the consumer) (id. at 566), the lack of regulation over certain tobacco products may be a contributing factor. Without a common regulatory framework, tobacco firms can exploit differences in regulatory requirements to drive consumers to different product markets.

[2] FDA notes that taxation falls under the jurisdiction of the U.S. Department of Treasury/Alcohol and Tobacco Tax and Trade Bureau (TTB) and that neither FDA's act of ''deeming'' nor any other FDA regulations directly affect the taxation of any tobacco product.

III. Continuum of Nicotine-Delivering Products

There are public health questions and concerns about currently unregulated tobacco products. Nevertheless, there are distinctions in the hazards presented by various nicotine-delivering products. Some have advanced views that certain new non-combustible tobacco products (such as e-cigarettes) may be less hazardous, at least in certain respects, than combustible products given the carcinogens in smoke and the dangers of secondhand smoke. To the extent that certain products are shown to be less harmful, they could help reduce the overall death and disease toll from tobacco product use at a population level in the United States. This is a function of the existence of a continuum of nicotine-delivering products that pose differing levels of risk to the individual.

Cigarette smoking is the major contributor to the death and disease attributable to tobacco use. The challenge for FDA, in considering currently regulated products and any additional products that would be deemed to be subject to the FD&C Act, is that regulatory policy under the Tobacco Control Act must account for the net public health impacts at the population level. This includes impacts on initiation, cessation, and an evaluation of product harm.

Emerging technologies such as the e-cigarette may have the potential to reduce the death and disease toll from overall tobacco product use depending on who uses the products and how they are used. If such products result in minimal initiation by children and adolescents while significant numbers of smokers quit, then there is a potential for the net impact at the population level to be positive. If, on the other hand, there is significant initiation by young people, minimal quitting, or significant dual use of combustible and non-combustible products, then the public health impact could be negative.

FDA is aware that some e-cigarettes (as well as other products that would be

deemed under this proposed rule) are being marketed with flavors that may be attractive to young people. FDA asks for comments, data, and research to determine whether the Agency's evaluation of the relative risk or potential for harm reduction of such a product should be different in the presence of flavors in these products, especially if there is evidence that these flavors make the products more attractive to children. Because e-cigarettes are not currently subject to FDA jurisdiction (unless they are marketed for therapeutic purposes), FDA currently lacks the authority to collect vital information about these products. Deeming these products would permit us to collect information about their ingredients to ensure that other potentially harmful constituents are not present. Deeming would also allow us to collect information regarding health and behavioral effects of these products.

IV. Deeming Tobacco Products To Be Subject to the FD&C Act

At this time, based on the statute, cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco are subject to the self-executing provisions in the Tobacco Control Act, including: (1) General controls (e.g., registration, product listing, ingredient listing, user fees for certain products, and adulteration and misbranding provisions) and (2) premarket review requirements for certain products. See, e.g., sections 902 (adulteration provisions), 903 (misbranding provisions), 904 (ingredient listing), 905 (registration and product listing), 910 (premarket review for ''new'' ''tobacco products''), 911 (premarket review for ''modified risk tobacco products''), and 919 (user fees) of the FD&C Act (21 U.S.C. 387b, 387c, 387d, 387e, 387j, 387k, and 387s). This proposed rule would apply these FD&C Act provisions that are currently applicable to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco to other tobacco products meeting the statutory definition of tobacco product. Option 1 would apply this proposed rule to all products meeting the statutory definition of ''tobacco product,'' except accessories of a proposed deemed tobacco product, to be subject to the FD&C Act. Option 2 would propose to deem a certain subset of cigars (not including premium cigars), as well as other products meeting the definition of ''tobacco product,'' but excluding the accessories of a proposed deemed tobacco product. These two options, as well as FDA's definition of a ''covered cigar,'' are further discussed in section IV.C. FDA requests comments, data, and research as to which option should be utilized for the scope of this rule and, if Option 2 is selected as the scope of the final rule, the appropriateness of the definition of ''covered cigar.''

A. Public Health Benefits of Deeming

Deeming ''tobacco products'' (except accessories) to be subject to the FD&C Act would result in significant benefits for the public health. Once deemed, tobacco products become subject to the FD&C Act and its implementing regulations, affording FDA additional tools to use to reduce the number of illnesses and premature deaths associated with the use of tobacco products. For example, it would provide FDA with critical information regarding the health risks of the proposed deemed tobacco products including information derived from ingredient listing submissions and reporting of hazardous and potentially hazardous constituents required under the FD&C Act. Deeming would provide FDA with information on the location and number of regulated entities and allow the Agency to establish effective compliance programs. Deeming also would help to correct consumer misperceptions, due to variations in the regulatory status of tobacco products, that tobacco products not currently regulated by FDA are safe alternatives to currently regulated tobacco products (see section V.C). In addition, it would reduce the use of misleading claims on the products to allow for better-informed decision-making by consumers and would prohibit these products from being targeted to youth populations. It would prevent new products from entering the market that are not appropriate for the protection of public health or are not substantially equivalent to a predicate product already on the market. Newly deemed tobacco products also may be subject to future regulations if FDA determines that such regulation would be appropriate for the protection of the public health (section 906(d) of the FD&C Act).

The following public health benefits would result directly from the deeming provisions of this proposed rule:

- Adulteration and misbranding prohibited for all tobacco products (section 902 and 903 of the FD&C Act): Applying sections 902 and 903 of the FD&C Act would ensure that every tobacco product meets the same basic requirements and ensure that the labeling of such products is not false or misleading. FDA would be able to take enforcement action against any tobacco products that did not meet these basic standards. For example, if a product was produced in insanitary conditions or was contaminated, or if its labeling contained a misleading claim, it would be subject to FDA enforcement action, including seizure or injunction.
- Requirement for ingredient listing and reporting of HPHCs for all tobacco products (section 904 of the FD&C Act): Under this requirement, manufacturers and importers of all tobacco products would provide ingredient listings and reporting of HPHCs to FDA. FDA would be able to take enforcement action with respect to those tobacco products for which an ingredient listing or report of HPHCs was not provided. Ingredient listings and reports of HPHCs would assist FDA in better understanding the contents of regulated products and their health consequences. That information would assist FDA in assessing potential health risks and determining if future regulations to address the health risks posed by particular products are warranted. However, FDA recognizes that it could be difficult for manufacturers of certain proposed deemed products (e.g., small businesses) to fulfill these requirements. Accordingly, FDA requests comments as to whether smaller manufacturers may be unable to satisfy these requirements and how FDA might be able to address those manufacturers' concerns.
- Requirement for registration and product listing (section 905 of the FD&C Act): With application of this requirement, FDA would require registration of all tobacco product manufacturing establishments and product listings for all tobacco products. FDA would be able to conduct more efficient inspections and bring enforcement action, if necessary, against a tobacco firm not in compliance with the requirements of the Tobacco Control Act. While this requirement would provide FDA with critical information, the Agency also recognizes that it could be costly for certain manufacturers of proposed deemed products. Therefore, FDA requests comment and data on possible ways to implement this requirement (e.g., delaying compliance with this provision) that would reduce costs for manufacturers yet still be appropriate for the protection of public health.
- Review of premarket applications and SE reports (section 905 and 910 of the FD&C Act): With the SE pathway, FDA can evaluate whether a new product raises different questions of public health compared to its predicate product. Through the premarket application pathway, FDA could authorize the introduction of products into the market where appropriate for

the protection of public health and prevent introduction of products that are detrimental to the public health.

Implementation of these proposed provisions would allow FDA to monitor product development and changes and to prevent more harmful or addictive products from reaching the market. The proposed provisions would also provide a mechanism through which those products that are less harmful or addictive could enter the market. The greater regulatory certainty created by premarket authorizations should help companies to invest in creating novel products, with greater confidence that improved products will enter the market without having to compete against equally novel, but more dangerous products. For example, a company wishing to invest the additional resources needed to ensure that its e-cigarette is designed and manufactured with appropriate methods and controls will be more likely to do so if the product is not competing against products that are more cheaply and crudely made, yet appear to be identical to the consumer. FDA, through its authorities to authorize and deny the introduction of new products, can help reduce tobacco-related morbidity and mortality. Over time, the employment of the premarket authorities can spur innovation and help to create a market where available products are less dangerous when consumed, less likely to lead to initiation of tobacco use, and/or easier to quit.

Further, FDA's premarket review of the proposed deemed products will increase product consistency. For example, FDA's oversight of the constituents of e-cigarettes cartridges would help to ensure quality control relative to the chemicals and their quantities being aerosolized and inhaled. At present, there is significant variability in the concentration of chemicals amongst products—including variability between labeled content and concentration and actual content and concentration. The health consequences of these products are still largely unknown and the popularity of these products is growing exponentially (Refs. 23, 24, and 25). Without a regulatory framework, users who expect consistency in these products may instead be subject to significant variability in nicotine content among products, raising potential public health and safety issues.

• Elimination of ''light,'' ''low,'' and ''mild'' descriptors and other unproven modified risk claims (section 911 of the FD&C Act): Applying this requirement to proposed deemed products would help reduce consumer confusion and misconceptions about such products. Congress has concluded that the health dangers of tobacco products marketed as modified risk tobacco products that ''do not in fact reduce risk'' are ''so high'' that FDA's premarket review is necessary to protect public health and ensure that such products will reduce health risks (section 2(39), (40), and (43) of the Tobacco Control Act). Given that certain users have initiated and continued using certain tobacco products rather than others (or quitting entirely) based on unproven modified risk claims and consumers' unsubstantiated beliefs that some tobacco products are less hazardous than others, this requirement could lead to increased cessation and reduced initiation.

• Prohibition of free samples of the proposed deemed products (section 102 of the Tobacco Control Act): This prohibition would eliminate a pathway for youth to access tobacco products, reducing youth initiation and therefore short-term and long-term morbidity and mortality resulting from these products. The Institute of Medicine (IOM) has stated that free samples of cigarettes ''encourage experimentation by minors with a risk free and cost-free way to satisfy their curiosity'' (Ref. 26). While the IOM was speaking in the context of cigarettes, the same rationale would apply to the proposed deemed products. In addition, the United States Court of Appeals for the Sixth Circuit previously recognized that FDA has provided ''extensive'' evidence that free tobacco samples constitute an ''easily accessible source'' for youth (*Discount Tobacco City & Lottery, Inc.* v. *United States,* 674 F.3d 509, 541 (6th Cir. 2012) (citing 61 FR 44396 at 44460, August 28, 1996), *cert. denied,* 133 S. Ct. 1966 (2013)). FDA requests comments and data showing the extent to which this restriction would reduce youth use of the proposed deemed products.

• Authority to propose product standards for proposed deemed tobacco products (section 907 of the FD&C Act (21 U.S.C. 387g)): If products meeting the definition of tobacco products are deemed to be subject to the tobacco authorities in the FD&C Act, FDA would have the authority to propose product standards that would apply to proposed deemed tobacco products, if such standards were appropriate for the protection of public health. For example, FDA could issue a standard regarding additives, constituents, or other components of a proposed deemed tobacco product under section 907 of the FD&C Act. This would help to ensure that tobacco products meet standards that are appropriate for the protection of the public health.

B. The Sottera Decision

In 2008 and early 2009, FDA detained several shipments of electronic cigarettes and their accessories offered for import by Smoking Everywhere and Sottera, Inc. (doing business as NJOY) and eventually refused admission into the United States to two of Smoking Everywhere's shipments on the ground that the products appeared to be unapproved drug/device combination products. Smoking Everywhere—subsequently joined by Sottera, Inc.—sued the Agency and argued, among other things, that the Supreme Court's decision in *Food & Drug Administration* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120 (2000) foreclosed regulation of electronic cigarettes under the drug and device provisions of the FD&C Act unless the products were intended for therapeutic use. The district court agreed and issued a preliminary injunction. (*See Smoking Everywhere, Inc.* v. *FDA,* 680 F. Supp. 2d 62 (D.D.C. 2010).) The government appealed this decision to the United States Court of Appeals for the D.C. Circuit.

On December 7, 2010, the D.C. Circuit affirmed the preliminary injunction, holding that products meeting the FD&C Act's definition of ''tobacco product,'' including electronic cigarettes, are ''drugs'' and/or ''devices'' under the FD&C Act if they are ''marketed for therapeutic purposes,'' whereas ''customarily marketed tobacco products'' are ''tobacco products'' under the Tobacco Control Act. (*See Sottera, Inc.* v. *Food & Drug Administration,* 627 F.3d 891 (D.C. Cir. 2010).) On January 24, 2011, the D.C. Circuit denied the government's petitions for rehearing and rehearing *en banc* (by the full court). (*See Sottera, Inc.* v. *FDA,* No. 10–5032 (D.C. Cir. Jan. 24, 2011) (*per curiam*).) This case affirms that FDA cannot regulate ''customarily marketed'' tobacco products, including pipe tobacco, small and large cigars, e-cigarettes, and hookah tobacco, until a regulation that deems them to be subject to the FD&C Act is finalized.

On April 25, 2011, FDA issued a letter to stakeholders announcing that the government had decided not to seek further review of the *Sottera* decision and that it would comply with the jurisdictional lines established by *Sottera* (see Ref. 27). The Agency noted that the Tobacco Control Act places certain ''tobacco products'' (i.e., cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco) immediately under the general controls

and premarket review requirements of the FD&C Act (see section 901(b) of the FD&C Act). The Tobacco Control Act also permits FDA, by regulation, to extend those controls to other categories of ''tobacco products'' (id.). Further, the stakeholder letter announced FDA's intention to propose a regulation that would extend the Agency's ''tobacco product'' authorities in the FD&C Act to other categories of tobacco products that meet the statutory definition of ''tobacco product'' in section 201(rr) of the FD&C Act.

C. Options for Premium Cigars and Request for Comments Regarding Scope

As discussed in sections V and VI, although all cigars are harmful and potentially addictive, it has been suggested that different kinds of cigars (e.g., small cigars, cigarillos, large cigars, premium cigars) may have the potential for varying effects on public health, if there are differences in their effects on youth initiation, the frequency of their use by youth and young adults, and other factors. In addition, the proportion of cigar smokers showing clear signs of dependence remains unknown, and usage patterns indicate that cigar only use beginning in adulthood is less likely to produce addiction than the use of cigarettes. Thus, by proposing two options for the scope of this rule, FDA is seeking comment on whether all cigars should be subject to deeming and what additional restriction(s) may or may not be appropriate for different kinds of cigars. In particular, FDA is seeking comment on the relative merits of Option 1 versus Option 2, taking into account what is appropriate to protect the public health, including possible benefits to the public health or possible negative public health consequences of adopting one Option or the other.

Under Option 1, the proposed rule would extend FDA's authority to all products meeting the definition of ''tobacco product,'' except the accessories of such products. (See section IV.E for more information regarding FDA's proposal not to include accessories in the scope of this rule). This scope would include all cigars, including small, large, and premium cigars. FDA considers a cigar to be a tobacco product that: (1) Is not a cigarette and (2) is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco. (See 26 U.S.C. 5702(a)).

Under Option 2, the proposed rule would extend FDA's authority to a subset of cigars (defined as ''covered cigars'') and to other products meeting the definition of ''tobacco product,'' except the accessories of such products. In order to define the products that would be subject to this approach, FDA would propose to define a covered cigar to mean: any cigar as defined in this part, except a cigar that: (1) Is wrapped in whole tobacco leaf; (2) contains a 100 percent leaf tobacco binder; (3) contains primarily long filler tobacco; (4) is made by combining manually the wrapper, filler, and binder; (5) has no filter, tip, or non-tobacco mouthpiece and is capped by hand; (6) has a retail price (after any discounts or coupons) of no less than $10 per cigar (adjusted, as necessary, every 2 years, effective July 1st, to account for any increases in the price of tobacco products since the last price adjustment); (7) does not have a characterizing flavor other than tobacco; and (8) weighs more than 6 pounds per 1000 units.

While FDA is proposing this second option to possibly define a subset of cigars and provide a separate regulatory regime for them, FDA may determine that it is most appropriate to include elements of both options in any final rule. For example, FDA may decide to deem all cigars subject to the tobacco product authorities in Chapter IX of the FD&C Act but may impose different additional restrictions for a certain subset of those cigars. We ask for comments, including supporting facts, research, and other evidence, on the following questions regarding this issue:

- Is this proposed definition of ''covered cigar'' appropriate to capture those products that, because of how they are used, may have less of a public health impact than other types of cigars?
- Should long filler tobacco content be included as one of required elements of a ''premium'' cigar (excluded from the definition of a ''covered cigar'')? If so, what percentage of the tobacco contained in the cigar should be required to be long filler tobacco in order for the cigar to be considered ''premium''?
- Is it appropriate to include the $10 price point in differentiating ''premium'' cigars from other cigars? Please provide any data or information that supports the selection of a $10 price point or, if you believe a different price point is more appropriate, that supports the selection of that price point.
- Should a volume/rate restriction (e.g., ''is produced at a rate of no more than [insert number] units per minute'') be included as one of required elements of a ''premium'' cigar (excluded from the definition of a ''covered cigar'')? If we were to include this restriction, what should the rate be? How would FDA determine compliance with such a restriction?
- Is it appropriate to include the proposed weight restriction (6 pounds per 1000 units) in differentiating ''premium'' cigars from other cigars?
- Would a different regulatory scheme for covered cigars, as defined here, or other category of cigars adequately address the dangers of tobacco use by adults or the proven dangers associated with use of cigars (such as increased risk of several cancers even among those users who do not inhale, and risk associated with lower levels of use as discussed in section VII)?
- How should the fact that studies indicate that young adults likely prefer cigarillos, as opposed to traditional large cigars, affect FDA's decision about whether to regulate ''premium'' cigars?

Although the Agency is proposing a definition with respect to Option 2, FDA remains concerned that any attempts to create a subset of premium cigars that are excluded from regulatory authority might sweep other cigar products under its umbrella. Therefore, we ask for any comment as to how FDA could further refine this definition, within the context of Option 2, to ensure that the exclusion would apply only to those cigars that, because of how they are used, may have less of a public health impact than other types of cigars.

1. Option 1: Do Not Restrict Categories of Cigars

Under Option 1, FDA would not restrict the categories of cigars that fall under the umbrella of deeming and the additional provisions proposed here (i.e., minimum age and identification; vending machine restrictions; and health warning requirements). Therefore, small, large, and premium cigars would all be subject to FDA's tobacco product authorities under this option.

As FDA has explained throughout the rule, all cigars are harmful and potentially addictive (including small cigars, cigarillos, large cigars, and premium cigars). Cigar smoking is strongly related to certain cancers (including oral, esophageal, laryngeal, and lung cancers), heart disease, and premature death (Refs. 28 and 30). Cigar smoking can cause cancers of the mouth and throat even for smokers who do not inhale (Ref. 28 at 120–130). As a result, cigar smokers who do not inhale have disease risks higher than those who have never smoked, including a 7 to 10 times higher overall risk of mouth and throat cancer (Ref. 28 at ii, 125). This similarity in risk is likely due to the similar doses of tobacco delivered directly to the oral cavity and esophagus by cigars and cigarettes (Ref. 30 at 738).

In addition, cigar smokers, regardless of whether they inhale, receive a high smoke exposure to the mouth and tongue. The esophagus is exposed to the carcinogens of tobacco smoke, which collect on the mouth's surface and are swallowed with saliva, rendering cigar smoking a cause of esophageal cancer (Ref. 28 at 130). See section VII.E for further discussion of the dangerous health risks associated with cigar smoking, including data regarding risks of additional cancers and disease.

Cigar tobacco contains nicotine in concentrations similar to those observed in cigarettes; however, given that most cigars contain more tobacco, many typically contain greater quantities of nicotine than cigarettes (Ref. 28 at 81). A large cigar may contain as much tobacco as a whole pack of cigarettes (Refs. 30 and 31). Nicotine levels in cigar smoke can be up to 8 times higher than levels in cigarette smoke—1.7 mg in nonfiltered cigarettes, 1.1 mg in filtered cigarettes, 3.8 mg in little cigars, 9.8 mg in cigars, and 13.3 mg in premium cigars (Ref. 28 at 67). Even cigar smokers who do not inhale can become addicted to the product given the absorption of nicotine through the buccal mucosa (Ref. 28 at 183–184).

Regardless of whether large cigar and pipe smokers inhale, smoke particles are deposited into the lungs and stomach area (Ref. 32). All cigars, regardless of size, produce higher levels of carcinogenic tobacco-specific nitrosamines per gram in mainstream cigar smoke than cigarettes produce in mainstream cigarette smoke (Ref. 28 at 75–76). A large cigar may contain as much tobacco as a whole pack of cigarettes (Refs. 30 and 31). Cigar smoke also produces measurable amounts of lead and cadmium (Ref. 28 at 75–76), and the concentrations of some toxic and carcinogenic compounds are higher in cigar smoke than in cigarettes (Ref. 33). The National Cancer Institute (NCI) found that ''cigar smoke is as, or more, toxic and carcinogenic than cigarette smoke; and differences in disease risks produced by using cigarettes and cigars relate more to differences in patterns of use, and differences in inhalation, deposition and retention of cigar smoke than to differences in smoke composition'' (Ref. 28 at 3).

Furthermore, a recent analysis of cigar use by young adults (aged 18 to 29) was presented at the meeting of the Society for Research on Nicotine and Tobacco providing preliminary confirmation that young adults do use premium cigars. This analysis was derived from data from the National Adult Tobacco Survey, a nationally representative survey conducted by the Centers for Disease Control and Prevention (CDC). The analysis shows that the percentage of young adults reporting current premium cigar use (15.1 percent) was just as high as the percent reporting current use of little filtered cigars (11.9 percent) (Ref. 34). Although the patterns of use may be quite different, this analysis shows that current premium cigar use is being reported by young adults and that such use is not restricted to older adults. In addition, among all young adults aged 18 to 29, 2.5 percent reported current use of premium cigars, compared with 1.7 percent among those aged 30 to 44, 1.2 percent among those aged 45 to 64, and 0.4 percent among those aged 65 and over (id.). Given that this analysis has not yet been included in a peer reviewed journal, FDA is including this analysis in the docket and specifically requests comment on it.

Under this option, FDA is proposing that all cigars be treated in a similar manner and that they all be deemed to be subject to FDA's authorities in the FD&C Act as well as the additional provisions proposed under this rule.

2. Option 2: Restrict Rule to Covered Cigars

FDA has heard from numerous interested parties, including manufacturers and retailers of premium cigars, on issues related to how premium cigars should be regulated. Some have contended that usage patterns of certain types of cigars (typically known as premium cigars) can vary dramatically from usage patterns of other cigars. They claim that the premium cigars category includes cigars that are used on celebratory occasions only a few times per year. In order to evaluate this contention and determine the proper scope for this rule, FDA has attempted to define the category of premium cigars by defining ''covered cigar'' and excluding what might be considered ''premium cigars'' from that definition. As stated throughout this section, FDA requests comment on its proposed definition of a ''covered cigar.''

Although FDA recognizes that all cigars are potentially addictive, the ability of cigars to deliver nicotine at a level capable of producing dependence is based on the degree of cigar smoke inhalation, the rate of oral nicotine absorption, the development of tolerance to nicotine, the age of initiation, and the duration of exposure (Ref. 28 at 183). The proportion of cigar smokers showing clear signs of dependence also remains unknown (Ref. 28 at 189). Some members of industry have noted that these factors suggest that those who smoke certain types of cigars are not addicted to them.

In addition, as explained in section VII.D, young adults appear to be particularly interested in cigarillos, rather than large cigars. It has been suggested that adolescents are not attracted to large and premium cigars, because they are offered for sale at a much higher cost relative to other types of tobacco products and are more difficult to access (e.g., large and premium cigars are typically sold at tobacconists' shops versus convenience stores). This is supported by the study of youth use of cigars by the Office of Inspector General for the Department of Health and Human Services which states that ''[m]anufactured cigars, rather than premium cigars, are most commonly used by teens due to their ease of purchase, low cost . . . .'' (Ref. 35). Some industry representatives have stated that there is ''no evidence to suggest that premium cigar use is increasing among youths'' (FDA–2011–P–0623). They also question whether adolescents use cigars, citing to the NCI Monograph No. 9, which states that ''[f]ew surveys have questioned cigar smokers about the quantity and type of cigars typically consumed'' (Ref. 28).

The International Premium Cigar and Pipe Retailers Association (IPCPRA), in its citizen petition seeking to exempt large and premium cigars from FDA regulation, acknowledged that a premium, hand-rolled cigar may be a ''tobacco product'' under the Act, but ''there is no evidence to suggest that it carries anywhere near the public health risks of a cigarette.'' (FDA–2011–P–0623). Therefore, they claim that premium cigars are not a public health problem requiring FDA regulation.

To support this argument, the IPCPRA notes that NCI has remarked about the dose-response relationship between the numbers of cigars smoked and the risk of disease, stating that ''as many as three-quarters of cigar smokers smoke only occasionally . . . [and t]his difference in frequency of exposure translates into lower disease].'' (id.). In addition, they note that the health risk tables in NCI's Monograph No. 9 refer to those who smoke 1–2 cigars *per day* and, therefore, the NCI Monograph does not even provide health risk data for the 75 percent majority of smokers who NCI identifies as ''occasional'' cigar smokers. They also state that ''smokers of 1–2 cigars per day are at no greater risk statistically . . . for risk of numerous cancers, coronary heart disease, chronic obstructive pulmonary disease (COPD), and cerebrovascular disease.'' (FDA–2011–P–0623). Moreover, given the difference in inhalation patterns

between cigarettes and cigars smokers noted by NCI, the IPCPRA claimed that the vast majority of premium cigar smokers are occasional users who do not inhale and, therefore, there would be little public health benefit if FDA were to regulate premium cigars. FDA requests any comments, data, and information regarding IPCPRA's analysis of this NCI data or other data related to disease risk, nicotine addiction, and how premium cigars are used.

D. Request for Comments Regarding Regulation of E-Cigarettes

FDA realizes that while all tobacco products are potentially harmful and potentially addictive, different categories of tobacco products may have the potential for varying effects on public health. For example, some have advanced views that certain new non-combustible tobacco products (such as e-cigarettes) may be less hazardous, at least in certain respects, than combustible products given the carcinogens in smoke and the dangers of secondhand smoke.

FDA is aware of the recent significant increase in the prevalence of e-cigarette use and continues to research how e-cigarette use is impacting the public health. In a computer-based mail-in survey of more than 10,000 U.S. adults, the prevalence of those who had ever used e-cigarettes (referred to as ''ever use'') quadrupled from 2009 to 2010 (Ref. 25). In 2011, 6.2 percent of all adults and 21.2 percent of current smokers had ever used e-cigarettes, representing an almost two-fold increase from 2010 estimates (Ref. 24). Data from Wave 8 of the International Tobacco Control (ITC) Four-Country Survey (collected from July 2010 to July 2011) indicated that 20.4 percent of those aware of e-cigarettes had reported trying the product (Ref. 36).

The numbers of individuals that have tried e-cigarettes in the previous 30 days also are indicative of the recent popularity of these products. An analysis of data from a nationally representative online study found that 3.4 percent of the general population had ever used e-cigarettes and 35.9 percent of the group that had used the products had used them within the previous 30-day period (Ref. 23). In addition, according to the 2011 and 2012 National Youth Tobacco Survey given to middle and high school students, e-cigarette use more than doubled, rising from 3.3 percent to 6.8 percent over these 2 years, including an increase of concurrent cigarette and e-cigarette use from 0.8 percent to 1.6 percent—a statistically significant increase (Refs. 4, 37). A study of 4,444 students from 8 colleges also found that 4.9 percent of students had ever used e-cigarettes, and 1.5 percent reported use in the past 30 days (Ref. 38).

We do not currently have sufficient data about e-cigarettes and similar products to determine what effects they have on the public health. Nevertheless, several recent studies of limited numbers of users suggest that e-cigarettes may have the potential to help smokers, particularly those who have had limited success with currently approved cessation programs (Refs. 39, 40, 41, 42, and 43). There is no evidence to date that e-cigarettes are effective cessation devices. For example, one trial examining cessation success between e-cigarettes, nicotine replacement patches, and placebos found that ''[a]chievement of abstinence was substantially lower than we anticipated.'' (Ref. 19). This study demonstrated cessation in 21 of 289 smokers (7.3 percent) versus 17 of 295 (5.8 percent) with nicotine patches. However, none of these results reached statistical significance (Ref. 19).[3] In addition, several large studies appear to raise questions as to whether e-cigarettes are effective cessation aids in real-world use. In a nationally representative survey of 1,836 current or recently former adult smokers, researchers found that, compared with smokers who had never tried to quit, ever-use of e-cigarettes was not associated with successful quit attempts, but was associated with unsuccessful quit attempts (Ref. 44). In another study that analyzed data from 2,758 callers to 6 state tobacco quitlines, e-cigarette users were significantly less likely to be tobacco abstinent at 7 months than participants who had never tried e-cigarettes (Ref. 45).

Some studies on very small numbers of subjects have found that e-cigarettes may have the potential to help with cessation by delivering a sufficient nicotine dose, particularly for experienced e-cigarette users (Refs. 39, 40, 41, 42, 43, and 46). Other studies have suggested that the sensory aspects associated with e-cigarettes may also have the potential to provide some short-term smoking reduction benefits. For example, in the study of 25 smokers utilizing e-cigarettes to address the short-term potential for smoking reduction, researchers found promising results but indicated that such ''results are not predictive of long-term reduction or quitting'' (Ref. 39). This study found that in smokers who had utilized e-cigarettes for 1 week, 10 puffs from the e-cigarette over a 4.5-minute period resulted in acute increases in plasma nicotine and heart rate and a median 55 percent reduction in craving (id.). In addition, the study noted a considerable individual variation in smoking topography and found that whether a user can obtain a sufficient nicotine dose depends on whether he or she is an experienced user (id.). Even though there is no evidence to date of a long-term cessation benefit, some researchers believe that e-cigarettes are at least capable of suppressing the urge to smoke (Ref. 41). Separately, although this is unrelated to smoking reduction, some researchers have stated that substituting e-cigarettes for tobacco cigarettes ''may substantially reduce exposure to tobacco-specific toxicants'' (Ref. 47).

Although e-cigarettes may have short-term smoking reduction benefits, FDA cautions that long-term studies are not available to conclude that e-cigarettes are a proven cessation product nor to establish what effects e-cigarettes have in users who might have otherwise quit, but instead engage in dual use of e-cigarettes and another tobacco product. There also is very limited information currently available on the positive and negative subjective effects, including craving and withdrawal, and the topography of e-cigarettes. FDA believes it is important to evaluate e-cigarettes based on their individual characteristics and their influence on behaviors in order to learn more about the potential benefits and drawbacks of the products. FDA will continue to analyze the potential benefits and harms of e-cigarettes, as well as their impact on nonusers and the population level as a whole, if the deeming rule is finalized. Thus, FDA is seeking comments, including supporting research, facts, and other evidence, as to how e-cigarettes should be regulated based on the continuum of nicotine-delivering products (as discussed in section III) and the potential benefits associated with e-cigarettes. Without more data, it is not possible to know the impact of these products either on reducing usage of cigarettes or in possibly prolonging usage of cigarettes while continuing to expose users to the harmful carcinogens in combustible tobacco products (Ref. 23).

E. Request for Comments Regarding Components, Parts, and Accessories

FDA asks for comments, including supporting facts, research, and other evidence, as to whether FDA should define components and parts of tobacco

[3] The observed p-value for cessation with e-cigarettes versus nicotine patches was p=0.46, and the observed p-value for cessation with e-cigarettes versus placebo was p=0.44 (Ref. 19).

products and how those items might be distinguished from accessories of tobacco products. As stated throughout this document, the FD&C Act defines ''tobacco product'' to include the components, parts, and accessories of such tobacco products (section 201(rr) of the FD&C Act). At this time, FDA is proposing to deem those products meeting the definition of tobacco product, except the accessories of proposed deemed products, to be subject to its tobacco control authorities. Therefore, components and parts of the proposed deemed tobacco products would fall under the scope of this rule, but accessories would not. We are proposing to include components and parts within the scope of this proposed rule, because they are included as part of a finished tobacco product or intended for consumer use in the consumption of a tobacco product. However, because accessories are not expected to be used in the consumption of a tobacco product, we expect that accessories will have little impact on the public health. FDA is seeking comment on its proposal to exclude accessories from the scope of the deeming rule.

FDA believes that components and parts of tobacco products are those items that are included as part of a finished tobacco product or intended or expected to be used by consumers in the consumption of a tobacco product. Components and parts that would be covered under this proposal include those items sold separately or as part of kits sold or distributed for consumer use or further manufacturing or included as part of a finished tobacco product. Such examples would include air/smoke filters, tubes, papers, pouches, or flavorings used for any of the proposed deemed tobacco products (such as flavored hookah charcoals and hookah flavor enhancers) or cartridges for e-cigarettes. In addition, FDA considers accessories to be those items that are not included as part of a finished tobacco product or intended or expected to be used by consumers in the consumption of a tobacco product, but may be used, for example, in the storage or personal possession of a proposed deemed product. Therefore, items such as hookah tongs, hookah bags and cases, hookah charcoal burners and holders, cigar foil cutters, humidors, or cigar carriers would be considered accessories and would not fall within the scope of this proposed rule.

At this time, FDA is not proposing definitions for components, parts, or accessories. If FDA were to develop definitions of these categories of products, the definitions likely would include factors such as whether these items are directly involved in the consumption, storage, or personal possession of tobacco products. These definitions also likely would take into account the foreseeable effect on public health of these items and whether a tobacco product can effectively be consumed without such items. If you believe FDA should define these terms, we seek comment on how to define the categories of ''components,'' ''parts,'' and ''accessories.'' We also ask for comments on whether and how the use of certain components, parts, or accessories might be used to alter the effects of the tobacco product on public health, the constituents delivered by the product, or the potential initiation of new tobacco users.

V. Basis for Additional Provisions

Substantial research informs the Agency's view that the access provisions proposed as part of this rule (e.g., age restrictions under 18; prohibition on vending machines) are effective in reducing initiation of cigarette and smokeless tobacco use, increasing cessation of cigarette and smokeless tobacco use, and otherwise reducing cigarette and smokeless tobacco product use among youth and adults. The research also reflects that health warnings on packages and advertisements effectively help consumers to understand and appreciate the health risks of tobacco use. Because historically most tobacco users in the United States have smoked cigarettes or used smokeless tobacco (Ref. 28), tobacco product use research and tobacco control efforts thus far have focused primarily on these products (Ref. 29) and not on many of the tobacco products, particularly novel products like certain dissolvables and gels, covered by this proposed rule (Ref. 48). Research findings regarding the use of cigarettes and smokeless tobacco products, including research regarding restrictions on those products that are identical to the restrictions proposed on products subject to deeming in this rule, also support FDA's proposed action here. FDA's reliance on these data is appropriate because of the addictive nature of tobacco products in general and the similar well-documented risks of several other tobacco products subject to this rule. In addition, consumer confusion and misinformation, reflected in mistaken beliefs that non-cigarette tobacco products are safe alternatives to cigarettes, also support the Agency's determination that the proposed restrictions are appropriate for the protection of the public health.

A. Addictive Nature of Products

The Surgeon General has long recognized the addictive nature of tobacco products due to the presence of highly addictive nicotine that can be absorbed into the bloodstream (see, e.g., Ref. 49 at 6–9). While the amount of nicotine delivered and the means through which it is delivered can either reduce or enhance the nicotine's potential for abuse and physiological effects (Ref. 50 at 113), nicotine is addictive (as discussed in section V.A), and FDA believes that all tobacco products currently available contain nicotine (Ref. 49). The quicker the delivery, rate of absorption, and attainment of high concentrations of nicotine, the greater the potential for addiction (Ref. 50 at 113). At the same time, the ultimate levels of nicotine absorbed into the blood from tobacco products currently on the market can be similar in magnitude regardless of the product forms used to deliver nicotine (Ref. 49). For example, research has shown that oral use of smokeless tobacco products that do not emit smoke results in ''high venous concentrations of nicotine equal to those for use of cigarettes'' (Ref. 50 at 113).

1. Impact of Nicotine on Youth and Young Adults

Adolescence is when most tobacco users begin to develop their behavior (Ref. 51 at 5, 58, 65–67). If individuals do not start using cigarettes during childhood or adolescence, they are unlikely ever to smoke (id.). Research shows that more than 80 percent of established adult smokers began smoking before the age of 18 (Ref. 52). An analysis by the World Health Organization (WHO) of studies performed among final-year high school students in the United States suggests that fewer than two out of five smokers who believe that they will quit within 5 years actually do quit. In high-income countries, about 7 out of 10 adult smokers say they regret initiating smoking and would like to stop (Ref. 53 at 2). When tobacco product use persists into adulthood, the risk of long-term, severe health consequences (such as cancer, heart disease, lung disease, and other serious medical conditions) increases as duration of use increases (Ref. 50).

In addition, there are data suggesting that the adolescent brain is more vulnerable to developing nicotine dependence than the adult brain. There is also evidence to suggest that these brain changes are permanent (Refs. 54 and 55). The Surgeon General reported that ''most people begin to smoke in

adolescence and develop characteristic patterns of nicotine dependence before adulthood'' (Ref. 51 at 29). These youth develop physical dependence and experience withdrawal symptoms when they try to quit smoking (id.). As a result, addiction to nicotine is often lifelong (Ref. 56). Youth and young adults generally ''underestimate the tenacity of nicotine addiction and overestimate their ability to stop smoking when they choose'' (Ref. 57). For example, one survey revealed that ''nearly 60 percent of adolescents believe that they could smoke for a few years and then quit'' (Ref. 58).

Moreover, exposure to substances such as nicotine can disrupt brain development and have long-term consequences on executive cognitive function (such as task-switching and planning) and on the risk of developing a substance abuse disorder and various mental health problems (particularly affective disorders such as anxiety and depression) as an adult (Ref. 1). This exposure to nicotine can also have long-term effects including decreased attention performance and increased impulsivity, which could promote the maintenance of nicotine use behavior (id.). Further, the 2010 Surgeon General's report noted that symptoms of dependence could result from even a limited exposure to nicotine during adolescence (Ref. 50). Thus, FDA seeks to limit youth exposure to nicotine and other addictive constituents in tobacco by proposing restrictions on the age at which individuals can purchase covered tobacco products. FDA is proposing to prohibit sales of proposed deemed products to individuals under 18 years of age, consistent with the current regulatory prohibition on sales of cigarettes and smokeless tobacco products to individuals under 18 years of age.

Nicotine addiction research studies suggest that nicotine increases sensitivity to rewarding stimuli in the environment, which may reinforce smoking behavior in vulnerable individuals and contribute to nicotine addiction (Ref. 59). Researchers have found that adolescent brains are particularly vulnerable to the rewarding effects of nicotine, and nicotine exposure during adolescence diminished the negative effects of high nicotine exposure as an adult (Ref. 60 at 658). Nicotine also may play a role in neurodevelopment in adolescence, alter future responsiveness to nicotine, and increase brain activation related to smoking cues (Ref. 61 at 1968, Ref. 62 at 152, and Ref. 63 at 7). Ingredients in tobacco or tobacco smoke other than nicotine may have reinforcing or synergistic effects of their own (Ref. 50 at 111). See section VII.C for additional discussion regarding the addictiveness of nicotine.

2. Nicotine Levels

Tobacco product users absorb nicotine readily from tobacco smoke through the lungs and through the mouth or nose for noncombustible forms of tobacco (Ref. 49 at iii). Nicotine can also be absorbed through the skin, as evidenced by the use of the nicotine patch for relieving nicotine withdrawal symptoms. With regular use, nicotine levels accumulate in the body during the day from the tobacco product use and then decrease overnight as the body clears the drug (id).

Nicotine introduced through the lungs is rapidly distributed to the brain (Ref. 49 at 12). Although somewhat slower, absorption of nicotine through the oral mucosa and skin is substantial and can produce blood levels comparable to those achieved through lung absorption. The effects of nicotine on the central nervous system occur rapidly after absorption of nicotine from tobacco products (id.). Mild nicotine intoxication even occurs in first-time smokers (Ref. 49 at 15–16). Tolerance to the effects of nicotine develops rapidly. The nicotine level in proposed covered tobacco products varies, both across product types and brands of the same product type.

Given the ease with which nicotine can be absorbed into the body, and the impacts on tobacco users (particularly youth) as described in section V.A, the nicotine consumption associated with the proposed deemed products is a primary reason why FDA believes that deeming these products to be subject to FDA's tobacco product authorities is necessary and the proposed additional restrictions are appropriate for the protection of public health. Each of the products described in this document contains nicotine and, therefore, has the potential to addict consumers.

a. Nicotine in, and Absorption of Nicotine From, Cigars

Cigar tobacco contains nicotine in concentrations similar to those observed in cigarettes; however, given that most cigars contain more tobacco, many typically contain greater quantities of nicotine than cigarettes (Ref. 28 at 81). The amount of nicotine in a cigar can range from the equivalent of a single cigarette to the equivalent of an entire package of cigarettes, depending on cigar size and the amount of tobacco incorporated into its components (Refs. 28 at 182 and 30 at 736). A study of 10 cigars selected at random from a cigar retailer found that the cigars ranged in nicotine concentration from 4.70 milligrams per gram (mg/g) to 22.00 mg/g (Ref. 28 at 183).

In fact, nicotine levels in cigar smoke can be up to 8 times higher than levels in cigarette smoke—1.7 mg in nonfiltered cigarettes, 1.1 mg in filtered cigarettes, 3.8 mg in little cigars, 9.8 mg in cigars, and 13.3 mg in premium cigars (Ref. 28 at 67). Whether cigars deliver nicotine at a level capable of producing dependence is based on the degree of cigar smoke inhalation, the rate of oral nicotine absorption, the development of tolerance to nicotine, the age of initiation, and the duration of exposure (Ref. 28 at 183). Even cigar smokers who do not inhale can become addicted to the product given the absorption of nicotine through the buccal mucosa. The nicotine exposure from inhaling the smoke from a single cigarillo is similar to exposures from inhaling smoke from single cigarettes (Ref. 64). The proportion of cigar smokers showing clear signs of dependence remains unknown (Ref. 28 at 189).

Nicotine can exist in protonated and free base (or unprotonated) form; and when in free base form, it is the most addictive and readily absorbed via respiratory tissues, skin, and the gastrointestinal tract, which results in the cigar being more addictive and even more difficult for the user to cease using than the cigar would be if it only delivered nicotine in the protonated form (Refs. 49 at 593 and 50 at 16). ''The amount of nicotine available as free, unprotonated nicotine is generally higher in cigars than in cigarettes due to the higher pH of cigar smoke'' (Ref. 28 at 97). Nicotine absorbed across the buccal mucosa can provide sustained amounts of ''free base'' nicotine to the user, which may explain why cigar smokers are less likely to inhale than cigarette smokers (id.). Thus, a cigar also can deliver nicotine much like chewing tobacco or oral snuff with nicotine extraction from the unburned tobacco absorbed directly through the buccal mucosa and lips (Ref. 28 at 183–184). Researchers have found that some cigar smokers, particularly those who formerly smoked or currently smoke cigarettes, were likely to obtain the nicotine by inhaling smoke directly into the lungs, where it was absorbed as rapidly as cigarette smoke (Ref. 28 at 186).

Usage patterns suggest that cigar-only use that begins in adulthood may be less likely to produce dependence than cigarette smoking, and it is not likely ''that *substantial* levels of physical dependence would be observed in

people who rarely smoked on 2 or more consecutive days'' (Ref. 28 at 189–190) (emphasis added). However, studies suggest that cigar use is underreported by adolescents in part due to misunderstanding of the definition of ''cigar'' in national surveys (Ref. 65 at 845 and Ref. 66 at 2, 4). For example, when a group of students were re-administered a national survey but asked whether they had used cigars with the brand name ''Black and Mild'' in the past 30 days rather than just ''cigars, little cigars, or cigarillos,'' the percentage of students reporting cigar use nearly doubled—from 12.9 percent to 20.7 percent. (Ref. 65 at 842). Therefore, adolescents need to be aware that small and large cigars, like cigarettes, contain nicotine that can cause addiction (see section V.A for further discussion regarding the effects of nicotine on adolescent brains).

b. *Nicotine in, and Absorption of Nicotine From, E-Cigarettes*

The amount of nicotine in e-cigarettes varies among brands. In a 2012 study, researchers tested the products under conditions in which e-cigarette users use their products (Ref. 6). They found that ''high nicotine'' cartridges delivered between 0.5 mg and 15.4 mg of nicotine, and cartridges labeled ''low'' or ''medium'' delivered between 0.5 mg and 3.1 mg of nicotine (id.). The efficacy of the nicotine aerosolization also varied widely—with some e-cigarettes aerosolizing within a range of 21 to 85 percent of the relative amounts of nicotine present in the cartridges (id.). As a result, nicotine levels of a single puff of 70 milliliters may be estimated between 1.7 micrograms (mcg) and 51.3 mcg (id.). We are also aware that some e-cigarettes currently being marketed claim to permit users to adjust the level of nicotine delivery and that some users may attempt to employ this claimed feature to reduce their nicotine use over time.

c. Nicotine in Hookah Tobacco

Researchers have found that the nicotine level to which users are exposed while smoking hookah tobacco is greater than the level from cigarette smoking and, therefore, that hookah smoking also carries the potential for addiction (Ref. 67). In a study of frequent hookah tobacco users, half of the men and a third of the women reported trying, but failing, to quit smoking hookah tobacco in the past (id.). The researchers note that ''[h]ookah smoking exposes users to smoke and may be a gateway to nicotine addiction'' (id.).

d. Nicotine in Dissolvables

To date, little evidence is available to ascertain the pharmacological properties and harmful effects of dissolvable tobacco products or compare them with FDA-approved nicotine replacement products or other tobacco products (Ref. 68). The dose of unprotonated nicotine in dissolvable tobacco products can vary widely across product formulations and brands, as well as the manufacture date, lot, and batch (id.) Researchers at Indiana University-Purdue University Indianapolis published the first chemical analysis of dissolvable tobacco and found that ''dissolvables contain nicotine levels comparable to those in a single cigarette'' (Ref. 69, citing Ref. 70). Rapid intake of nicotine leads to the highest blood and brain concentrations at the lowest doses of nicotine, but oral administration requires higher doses of nicotine to produce the same toxic effects (Ref. 70).

B. Health Risks of Products

The health effects of cigarettes have been well documented (see, e.g., Refs. 49, 50, and 51). Like cigarettes, many of the tobacco products proposed to be deemed through this rule have well-documented adverse health effects. The health risks of some of these proposed deemed products are discussed in this section. See section VII for additional rationales for specific proposed health warnings.

In the ''Findings'' section of the Tobacco Control Act (section 2), Congress notes that the ''use of tobacco products by the Nation's children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults'' and that a ''consensus exists within the scientific and medical communities that tobacco products are inherently dangerous and cause cancer, heart disease, and other serious adverse health effects.'' In enacting the Tobacco Control Act, Congress found that providing FDA with authority to regulate tobacco products, including the advertising and promotion of such products, would result in significant benefits to the American public in human and economic terms (section 2(12) of the Tobacco Control Act). The U.S. Government has a substantial interest in reducing the number of Americans, particularly youth and young adults, who use cigarettes and other tobacco products, to prevent the life-threatening health consequences associated with tobacco product use (section 2(31) of the Tobacco Control Act). Virtually all new users of most tobacco products are youth, and a reduction in tobacco product use by this population alone could significantly reduce tobacco-related death and disease in the United States (Ref. 51).

Congress also expressed concern about the addictiveness of these ''inherently dangerous products'' (section 2(2) of the Tobacco Control Act). In 1988 the Surgeon General found that ''all tobacco products contain substantial amounts of nicotine'' (Ref. 49). Addictiveness means ''[t]he state or quality of being addictive; addictedness, addiction; an instance of this.'' (Ref. 71). Because the covered tobacco products (i.e., those products deemed to be subject to the FD&C Act under § 1100.2, other than a component or part that does not contain tobacco or nicotine) are made or derived from tobacco and contain nicotine, they are addictive (Refs. 72, 73, 74, 75, and 76). There are several symptoms that are indicative of addiction to drugs including nicotine. The primary criteria are highly controlled or compulsive use, psychoactive effects, and drug-reinforced behavior (Ref. 50 at 105–106). Additional criteria are stereotypic patterns of use, despite harmful effects, relapse following abstinence, and recurrent drug cravings (id.). Dependence-producing drugs often produce tolerance and physical dependence (id.).

''Tobacco use is the leading preventable cause of disease, disability, and death in the United States'' (Ref. 77). When people do not use tobacco products, the positive impact on public health is great. For example, smoking declines in the last half century are responsible for nearly 40 percent of the reduction in male lung cancer deaths between 1991 and 2003 (Ref. 78). By extending FDA's ''tobacco product'' authorities to tobacco products meeting the statutory definition, FDA would be better able to ensure that the health risks of these products are effectively communicated to consumers and that youth do not have access to these products. These steps would increase the likelihood that existing users will quit using tobacco products, and decrease the likelihood that new individuals, including youth, will initiate tobacco product use.

1. Dissolvable Products

As stated previously, dissolvable products that do not currently meet the definition of smokeless tobacco under 21 U.S.C. 387(18), because they do not contain cut, ground, powdered, or leaf tobacco and instead contain nicotine extracted from tobacco, are not currently regulated by FDA. This proposed rule

would ensure that all dissolvable products are subject to FDA regulation.

The ''Monitoring the Future'' study found that the use of noncombustible tobacco products (including pouches and dissolvables, which contain nicotine, tobacco carcinogens, and toxicants) has increased amongst youth in grades 8, 10, and 12 over the past several years (Ref. 83). Compared to cigarettes, scientists have found that dissolvables have a higher proportion of unprotonated nicotine but that dose can vary widely (Ref. 68). The potential for acquiring nicotine dependence exists for individuals who initiate tobacco product use with dissolvable products, but the information about hazardous or potential hazardous constituents in such products is sparse (id.).

Certain dissolvable smokeless tobacco products also have the potential for unintended poisonings given the candy-like appearance of certain dissolvable tobacco products. Data from 2010 indicates that 13,705 tobacco product ingestion cases were reported and more than 70 percent of those cases involved infants under a year old (Ref. 79). While it is unclear exactly how many of these cases involved dissolvables, smokeless tobacco products (in all forms, including dissolvables) were the second most common tobacco product ingested by children, after cigarettes (id.).

2. Cigars

Regardless of whether large cigar and pipe smokers inhale, smoke particles are deposited into the lung (Ref. 32). A large cigar may contain as much tobacco as a whole pack of cigarettes (Refs. 30 and 31). In addition, the concentrations of some toxic and carcinogenic compounds are higher in cigar smoke than in cigarettes, and tobacco smoke is a major source of fine-particle and carbon monoxide indoor air pollution (Ref. 33). A smoker's risk of cardiovascular disease is particularly high for former cigarette smokers who switch to cigars, because they are more likely to be regular users and to inhale the smoke (Ref. 28 at 155).

As discussed further in section VII.E, cigar smoking also is strongly related to certain cancers (including oral, esophageal, laryngeal, and lung cancers), heart disease, and premature death (Refs. 28 and 62). Cigar smokers who inhale have a similar risk of death and disease as cigarette smokers (see, e.g., Ref. 28). Research suggests that smoking small cigars, in particular, is associated with smoke inhalation that leads to significant exposure to carbon monoxide and presumably other toxic components of tobacco smoke, which can lead to respiratory diseases usually associated with cigarette smoking (Ref. 64).

Moreover, age of initiation data illustrates the increasing popularity of cigars, in particular small cigars, and the potential risks for youth and young adults. According to the 2010 and 2011 data from the National Survey on Drug Use and Health (NSDUH), 2.95 million people aged 12 or older initiated cigar use in 2010—1.087 million of whom where between the ages of 12 and 18. In 2011, 2.8 million initiated cigar use, of which 1.113 million were between the ages of 12 and 18 (Refs. 6, 80, 81, and 82). The 2010 ''Monitoring the Future'' study showed that 23 percent of 12th graders reported smoking small cigars in the past year (Ref. 83). While there was a dip in the number of high school seniors smoking small cigars, that number remained high at 19.5 percent in 2011 (Ref. 84). Additional discussion of the health risks associated with cigars is included in section VII.E.

3. Pipe Tobacco

Studies of pipe smokers illustrate a risk of tobacco-related disease similar to the risk in those who inhale cigar smoke or smoke cigarettes (Ref. 85). The Surgeon General previously found that pipe and cigar smokers experience oral and laryngeal cancer risks similar to that of a cigarette smoker (Ref. 86). Moreover, when compared with never having used tobacco, researchers found that pipe smokers have an increased risk of death from cancers of the lung, oropharynx, esophagus, colorectum, pancreas, larynx, and from coronary heart disease, cerebrovascular disease, and COPD (Refs. 32 and 85). Further, in a Norwegian study involving 16,932 participants, researchers found that pipe smokers have an elevated risk of premature mortality similar to that of cigarette smokers who smoke at comparable consumption levels (Ref. 87). This finding applies to total mortality and mortality for smoking-related diseases (i.e., ischaemic heart disease, stroke, cardiovascular disease, and other smoking related cancers), except for lung cancer where smokers of only cigarettes have the highest mortality (id.). Notably, even men with the lowest daily consumption of pipe tobacco (less than three pipefuls per day) were found to have significantly higher health risks than never users (id.).

4. Waterpipe Smoking

Waterpipe smoking (also known as hookah, shisha, and narghile) uses specially made tobacco that comes in different flavors, such as apple, mint, cherry, chocolate, and licorice (Ref. 88). This type of tobacco use carries similar health risks as smoking cigarettes with respect to the large amounts of ultrafine particles emitted during a waterpipe smoking session (Ref. 89). Waterpipe smoke contains many of the same carcinogens and heavy metals as cigarette smoke, and because waterpipe smoking sessions last longer than smoking a cigarette and there is increased smoke volume, a single session of waterpipe smoking (which typically lasts 20 to 80 minutes) could potentially be more dangerous than smoking a cigarette (which typically takes 5 to 7 minutes) (Refs. 90 and 91). When compared to smoking a single cigarette, a meta-analysis of studies regarding waterpipe use showed that a single episode of waterpipe use is associated with exposure to 1.7 times the nicotine, 6.5 times the carbon monoxide, and 46.4 times the tar (Ref. 9). In one study of participants aged 18 to 50 years old, researchers found that a single waterpipe session leads to measurable transient dysfunction in cardiac autonomic regulation and suggests an increased risk of adverse cardiovascular events for hookah users (Ref. 92). When compared to individuals who do not use waterpipes, researchers also have found that waterpipe users (as ascertained by analyses in multiple studies of participants ages 10 to 80) more than double their risk of lung cancer, respiratory illness, and low birth weight when users are expectant mothers (Refs. 10, 93, and 94).

Studies also have demonstrated the presence of high levels of tobacco-related carcinogens such as certain polycyclic aromatic hydrocarbons (PAHs) and tobacco-specific nitrosamines (TSNAs) in waterpipe users, which increase cancer risk in users (Ref. 95 citing Refs. 96 and 97; and Ref. 98). For example, a study of exposure to nicotine, carbon monoxide, and carcinogens in subjects who used waterpipes under controlled conditions found that users had significantly higher carbon monoxide levels than even cigarette smokers, which can pose potential health risks especially for people with cardiovascular and pulmonary diseases (Ref. 98). This study also found increased urinary levels of TSNAs and PAHs following waterpipe smoking (id.). In fact, the excretion of all PAH metabolites increased 50 percent following waterpipe smoking, indicating that it is a significant source of exposure to this class of carcinogens (id.). Waterpipe use also poses additional public health risks due to shared mouthpieces and the heated, moist smoke that waterpipes produce. As a

result, users are at increased risk of contracting communicable diseases and viruses (Ref. 99).

Moreover, waterpipe use appears to be increasing among youth in the United States, further illustrating the potential risks for youth and young adults (Ref. 90). In 2010, results of the ''Monitoring the Future'' study showed that 17 percent of 12th graders reported smoking tobacco in a waterpipe (Ref. 83). The following year, 18.5 percent of high school seniors reported smoking tobacco in a waterpipe (Ref. 84). Researchers also studied waterpipe use among 689 students from 3 high schools in San Diego County. Of the study participants, 26.1 percent had used hookah and the mean age of initiation was 15.8 years (Ref. 90). Waterpipe users are exposed to tobacco toxicants and thus are at risk for the same types of harms caused by cigarette smoking and, in addition, may become cigarette smokers or dual tobacco users (Ref. 88).

5. E-Cigarettes

We do not currently have sufficient data about e-cigarettes to determine what effects they have on the public health. Some studies have revealed the existence of toxicants in both the e-cigarette liquid and the exhaled aerosol of some e-cigarettes. For example, FDA previously noted the presence in a certain e-cigarette cartridge of contaminants such as diethylene glycol (DEG)—a chemical that has caused poisonings in other consumer products such as acetaminophen and cough syrup and which FDA has stated ''is toxic to humans'' (Ref. 100, Ref. 101 citing Refs. 102, 103, and 104). While the presence of DEG in any product is of great concern, we note that it was found in only 1 of 18 cartridges studied and it was not found at all in another 16 studies (Ref. 41).

Further, one study found that toxic chemicals such as formaldehyde and acetaldehyde were detected in the cartridges as well as the aerosol from certain e-cigarette nicotine solutions (Ref. 47). Acrolein, which can cause irritation to the nasal cavity and damage to the lining of the lungs and may contribute to cardiovascular disease in cigarette smokers, was also found in the aerosol (id.). While the level of carcinogenic formaldehyde from the e-cigarette aerosol was somewhat comparable to the amount received from cigarette smoking, the overall levels of the toxicants tested in this study were 9 to 450 times lower than those in cigarette smoke (id.). In another study, a total of 22 chemical elements, some of which can cause adverse health effects in the respiratory and nervous systems, were identified in e-cigarette aerosol (Ref. 105). Among those elements were lead, nickel, and chromium, which are included on the Agency's harmful and potentially harmful constituents list (id., citing 77 FR 20034, April 3, 2012). Research published in 2013 reported that under near real-use conditions, e-cigarettes increased indoor air levels of polycyclic aromatic hydrocarbons, 1,2-propanediol, 1,2,3-propanetriol, glycerine, nicotine, fine particles, ultrafine particles, particle number concentrations, and aluminum. (Refs. 106 and 107).

Despite the existence of certain toxicants in e-cigarette devices and the exhaled aerosol, several studies support the notion that the quantity of toxicants is significantly less than those in tobacco cigarettes and tobacco smoke and similar to those contained in recognized nicotine-replacement therapies. For example, researchers reviewing the result of 16 laboratory analyses of e-cigarettes only found trace levels of TSNAs, and these were at levels similar to those in the nicotine patch (Ref. 41). Testing on some devices also has revealed the existence of TSNAs in cartridge fluid, but generally at low levels similar to those in nicotine replacement therapies (Refs.108). Another study, published in 2013, also found cadmium, lead, and nickel in the e-cigarette aerosol but only in trace levels and comparable to those levels found in the Nicorette inhaler (Ref. 47). Two researchers stated in 2011 that the ''preponderance of the available evidence shows [e-cigarettes] to be much safer than tobacco cigarettes and comparable in toxicity to conventional nicotine replacement products'' (Ref. 41). Even if such findings are applicable to many products, e-cigarette manufacturers may vary in the quality of production, as discussed in section V.B.5. with respect to contamination with DEG, and as discussed further with respect to significant variability in nicotine content, and such variation may be dangerous. As such, given the existence of toxic chemicals in at least some e-cigarettes and the fact that most contain nicotine, FDA believes that its oversight of these products (which would occur if this deeming ruling becomes final) is appropriate for the protection of the public health.

Researchers have identified instances of poor quality control and significant variability in nicotine content when testing certain e-cigarette cartridges (Refs. 6, 102, 109, and 110). For example, in one study, researchers found that actual nicotine amounts differed from label amounts by more than 20 percent in 9 out of 20 original e-cigarette cartridges tested, and in 3 out of 15 refill cartridges tested (Ref. 6). Yet, in another study, researchers theorized that manufacturing processes may have improved over time, because the nicotine content in both the original and-refill bottles was close to what was on the label and the difference between the content and labels was smaller than was previously reported (Ref. 111). However, it is unclear whether manufacturing processes have actually improved over time, because this study was conducted before or at the same time as studies finding significant variability in nicotine content. This potential variability in nicotine content could be misleading to consumers who believe that they are consuming one level of nicotine but instead may be consuming higher levels in certain instances.

More recently, some have noted the availability of flavored e-cigarette liquids and expressed concern about the possibility that these candy flavors could appeal to youth. E-cigarettes are available in numerous flavors including vanilla, chocolate, peach schnapps, bubblegum, and cola (Refs. 112 and 113). Following the release of a 2013 report by CDC noting the increased prevalence of e-cigarette use in middle school and high school students, students have been quoted in newspaper articles noting that classmates use e-cigarettes and that they prefer flavors like gummy bears ''because it tastes really good'' (Ref. 114). If this deeming rule becomes final, FDA would have the authority to issue regulations to prevent youth access to e-cigarettes (such as the minimum age and identification provision, which is being proposed with this rule). FDA asks for comments, data, and research regarding the following:

- Given the data showing a significant increase in e-cigarette usage among youth (Ref. 4) and the availability of fruit and candy-flavored nicotine liquids, what other regulatory actions should the Agency consider taking with respect to e-cigarettes?
- Does one's use of fruit and candy-flavored nicotine liquids impact the likelihood that such individual will initiate use of combustible tobacco products and/or become a dual user with combustible tobacco products? How should that affect FDA's regulatory decisions regarding e-cigarettes?

Another area for concern regarding e-cigarettes is their potential for acute toxicity. In February 2014, 41.7 percent of the combined calls to poison control centers for conventional cigarettes and e-cigarettes were for e-cigarette exposures (Ref. 115). In addition, 51.1

percent of those exposures were for children aged 0 to 5 years (id.).

Although the public health impact of e-cigarettes is unknown, FDA believes e-cigarettes that contain nicotine derived from tobacco should be deemed to be tobacco products in order to obtain product and ingredient listing information and levels of harmful and potentially harmful constituents to ensure that users are not exposed to inhaled chemicals known to be harmful. We also believe that more information is needed to determine the public health impact of these products.

Notably, in light of the impact of nicotine on youth (see section V.A), and given the data on co-use and poly-use of tobacco products by youth and others (see section V.D), FDA is proposing that tobacco products in all forms, as defined by statute, not just cigarettes and smokeless tobacco, be similarly regulated.

C. Consumer Confusion and Misinformation About Certain Covered Tobacco Products

1. Misinformation About the Harmfulness of Various Tobacco Products

Despite the addictiveness of nicotine and the documented adverse health effects of cigarettes, smokeless tobacco, cigars, and hookah tobacco, studies show that many consumers wrongly view certain tobacco products, including novel tobacco products, as safe alternatives to cigarettes and smokeless tobacco. Variations in the regulatory status of tobacco products may reinforce that mistaken perception.

Research reflects that many people inaccurately think cigars, as well as waterpipes and other tobacco products covered by this proposed rule, are safe alternatives to cigarettes. Indeed, research suggests that youth perceive cigars in a more positive light than cigarettes and believe cigars are more natural and less harmful (Refs. 35 and 116); and some do not realize that cigars contain nicotine (id.). In addition, in a focus group of African-American youth aged 14 to 18, researchers found that the participants were not well versed in the harms caused by smoking cigars (Ref. 116). In fact, the study found that youth had received very little cigar-specific health education, reinforcing the importance of alerting consumers about the dangers of smoking cigars (id.). Likely referring to small cigars, the youth noted that cigars were easy to obtain, that new brands were targeting youth, and that the products were prominent in rap videos (id.). Use of cigar products by youth and young adults is no longer an ''alternative'' to cigarette use, but rather is now the primary tobacco product of choice in certain urban and suburban areas (Ref. 117). One study also showed that adult cigar smokers (including cigarillo smokers) were three times as likely as non-cigar smokers to believe, mistakenly, that switching from cigarettes to cigars reduces a smoker's chance of illness (32.3 percent versus 11.2 percent), with former cigarette smokers the most likely among cigar smokers to believe that cigars are a safer alternative (47.9 percent) (Ref. 117). See section VII.C.1 for additional discussion of consumers' confusion and misinformation about the addictiveness of cigars.

Such confusion and misinformation about the harmfulness and addictiveness of cigars are particularly troubling given the increasing popularity of cigars (in particular, small cigars) among youth, especially young adult males and teenagers (Ref. 54). The 2010 National Survey on Drug Use and Health found that over 1 in 10 young adults (ages 18–25 years old) smokes cigars (Ref. 54 at 146, Table 3.5b). In 2011, 19.5 percent of high school seniors reported using small cigars in the past year (Ref. 84). The CDC also issued a study in 2012, which found that total cigarette consumption decreased 32.8 percent from 2000 to 2011, while consumption of loose tobacco and small and large cigars increased 123.1 percent over the same period (Ref. 22). These data suggest that certain smokers have switched from cigarettes to other combustible tobacco products (id.)

Whereas studies have shown that cigarette and waterpipe smoking deliver similar nicotine levels, one study showed that 46 percent of students wrongly believed that hookah is less addictive or safer than cigarettes, one third of which wrongly believed that hookah had less nicotine, no nicotine, or was generally less addictive than cigarettes (Ref. 90). Moreover, findings suggest that mistaken beliefs that waterpipe smoking is ''safer or less addictive than cigarettes'' are more prevalent among those who have ever used hookah (78.2 percent) compared to hookah nonusers (31.6 percent) (id.). Similarly, another study found that ''[freshmen college] students who used waterpipes and cigars perceived them as less harmful than regular cigarettes'' (Ref. 119). These findings are consistent with the finding that perceiving less product harm is associated with product use (id.). Moreover, research has shown that such false beliefs about product risks can be a significant predictor of subsequent use behavior (Refs. 120 and 121). For instance, adolescents with the lowest perceptions of short-term risks related to smoking were 2.68 times more likely to initiate smoking (Ref. 121).

In addition, some dissolvable tobacco products have a candy-like appearance, frequently are sold next to candy, and are packaged to make them more attractive to children, which can mislead consumers to think that they are, in fact, candy or somehow safer than other tobacco products (Refs. 17 and 79). This rule, if finalized, would apply the same requirements to all dissolvable tobacco products, including those that do not consist of cut, ground, powdered, or leaf tobacco.

Many consumers believe that e-cigarettes are ''safe'' tobacco products or are ''safer'' than cigarettes. FDA has not made such a determination and conclusive research is not available. Several studies have evaluated consumers' awareness of e-cigarettes and their perceptions of risk. For example, researchers involved in Wave 8 of the ITC Four-Country Survey (involving data from the United States, Canada, Australia, and the United Kingdom) asked all those respondents who were aware of e-cigarettes to relay their perceptions of the product (Ref. 36). The vast majority of the respondents who were aware of these products indicated that they believed e-cigarettes were less harmful than traditional cigarettes, including 65.9 percent of U.S. respondents—despite, as noted, the absence of a firm body of evidence to support such beliefs (id.). Two other surveys revealed similar results: (1) An online survey in which 70.6 percent of individuals aware of e-cigarettes believed that e-cigarettes were less harmful than regular cigarettes and (2) a telephone survey in which 84.7 percent of individuals aware of these products believed they were less harmful than regular cigarettes (Ref. 23). However, while the use of e-cigarettes may have prompted some smokers in the ITC Four-Country Survey to reduce their overall cigarette smoking and to adopt non-daily cigarette use, users of e-cigarettes were not more likely to quit than nonusers of e-cigarettes (Ref. 36). Once again, there is not adequate evidence that e-cigarette use is a safe alternative to conventional cigarette smoking. See section VII.C.1 regarding the current mixed evidence about potential short-term reduced smoking benefits from e-cigarettes. Notably, as discussed in that section, many consumers have strong, but to date unsubstantiated, beliefs that e-cigarettes are a safe and effective way for quitting cigarette use, and many consumers start

consuming e-cigarettes because of those unsubstantiated beliefs. Researchers also have expressed concerns that e-cigarettes that deliver very low levels of nicotine may be effective starter products for non-tobacco product users (Ref. 101). Such risks could be mitigated by the establishment of an FDA regulatory approach for these products that focuses on limiting youth initiation (id.).

2. Mistaken Perception by Adolescents

Nonclinical information, which includes cellular, tissue, and whole animal-based laboratory studies, both informs and supports clinical information. Most tobacco-related adverse health effects are long-term effects, such as COPD and cancer. What can take years or decades to develop in a human can be studied in nonclinical assays in mere days or months. In addition, nonclinical studies allow for histopathology, which yields strong scientific evidence of a biologically based cause for a clinically detectable symptomology. Through nonclinical studies, science is able to better control for exposure level of the product being tested, as well as control for exposure time and to include a recovery period, during which no exposure to the product can be controlled. All of these aspects of nonclinical testing enable science to better make the connection between an outcome, such as a toxicity endpoint, and the experimental treatment, such as a specific tobacco product or tobacco constituent. (See, e.g., Ref. 121.)

Non-clinical research has shown that: (1) Alterations to the brain caused by nicotine may have a lasting effect on the developing brain (Ref. 55 at 668–676); (2) the rewarding effects of low and moderate doses of nicotine were enhanced in adolescent animals as compared to adult animals, while the aversion to high doses of nicotine normally seen in adult animals were reduced (Ref. 60 at 658–663); (3) these affects are long lasting, as exposure to nicotine during adolescence reduced aversion to high doses of nicotine when the animals were tested as adults; (4) the adolescent brain is differentially sensitive to both the acute and repeated effects of nicotine relative to the adult brain (Ref. 76 at 2295); and (5) there are significant differences in nicotine sensitivity between early and late phases of adolescence (Ref. 60 and 76).

Brain processes that lead to rational decision making continue to mature through adolescence (Ref. 122 at 69–70). Acquisition of a fully coordinated and controlled set of executive functions occurs relatively later in development. As a result, several researchers have found that young people may not have the ability to rationally consider the risks and benefits involved with smoking and its long-term effects (Ref. 123 at 259–266). Young people also wrongly perceive that they are personally at less risk than others who smoke, and youth underestimate antismoking attitudes of their peers (id.). ''The belief pattern that emerges from this study and other research is one in which many young smokers perceive themselves to be at little or no risk from each cigarette smoked because they expect to stop smoking before any damage to their health occurs. In reality, a high percentage of young smokers continue to smoke over a long period of time and are certainly placed at risk by their habit'' (id.). Because they lack fully capable executive function, youth seriously underestimate the future costs associated with an addiction to nicotine (Ref. 55 at 4). Researchers believe that youth underestimate the risks of smoking because they are unable to appreciate the nature, severity, and probabilities of consequences associated with smoking. Youth also fail to understand the cumulative nature of the risk (Ref. 123 at 259–266). The proportion of students seeing a great risk associated with being a smoker leveled off during the past several years, according to recent research results, as has the proportion of teens saying that they disapprove of smoking or attach negative connotations to it (Ref. 83). Similarly, the ''Monitoring the Future'' survey identified a ''rebound'' in the rate of smokeless tobacco product use by high school students, which previously had declined from the mid-1990s to the early 2000s (id.). Researchers attributed the ''rebound'' to leveling off perceptions of harm caused by smokeless tobacco products, increased advertising of these products, and a proliferation of new types of smoke-free tobacco products (id.). In addition to systematically misunderstanding their risks of harm from various tobacco products, youth and young people also systematically underestimate their vulnerability to becoming addicted to nicotine and the use of tobacco products, and overestimate their ability to stop using tobacco products when they choose. See section VII.C.

D. Use as Starter Products or Dual Use With Other Tobacco Products

A non-cigarette ''tobacco product'' can be a starter product for new tobacco users before they migrate to cigarettes or other tobacco products, or for existing users to become dual users. In a 2008 study, researchers estimated that there were 7.3 million adolescent cigarette smokers in the United States in 2002 and 2004, and almost half of them were polytobacco users (users of more than one type of tobacco product) (Ref. 124). Of the estimated 3.3 million polytobacco users, 1.9 million used one other tobacco product and 1.4 million used two or more other products (id.). The 2012 Surgeon General's Report found that ''among adolescent and young adult tobacco users, concurrent use of cigarettes, smokeless tobacco, and/or cigars is common'' (Ref. 54 at 209). According to the 2009 Youth Risk Behavior Surveillance, among high school males who use tobacco, 13.2 percent smoke cigars (i.e., cigars, cigarillos, or little cigars) only, 21.2 percent smoke cigars and cigarettes, and 19.2 percent smoke cigarettes and cigars and also use smokeless tobacco (Ref. 54 at 155, Figure 3.13).

Significantly, studies of a variety of tobacco products suggest that some non-cigarette tobacco users may go on to become addicted cigarette smokers. For example, in one study of male smokeless tobacco users who were nonsmokers at baseline, 44.8 percent were still exclusively using smokeless tobacco at the 4-year followup, 25.5 percent had switched to smoking, 14.3 percent continued using smokeless tobacco but also became smokers, and 15.2 percent were no longer using any form of tobacco (Ref. 125). Thus, almost 40 percent of the original smokeless tobacco users had either switched to cigarettes or become dual users. In contrast, 78.7 percent of males who smoked at baseline but did not use smokeless tobacco were still smokers 4 years later, with only 0.8 percent switching to smokeless tobacco, 3.6 percent continuing to smoke but becoming smokeless tobacco users as well, and 16.9 percent quitting tobacco product use altogether (id.). Similarly, in a study of smokeless tobacco product use in young adult males, current smokeless tobacco users were 233 percent more likely to have initiated smoking at the 1-year followup than nonusers (Ref. 126). Subjects who reported past smokeless tobacco product use were 227 percent more likely to begin smoking than participants who had never used smokeless tobacco (id.). It is not yet clear whether users of the proposed deemed products go on to become addicted to cigarettes, but experts have expressed concern that e-cigarettes may draw more consumers to nicotine-containing products (Refs. 101).

Research involving tobacco products that would be covered by this rule

reveals similar conclusions. The prevalence of hookah use appears to be high among youth who have already tried cigarette smoking and is associated with other tobacco product use behaviors. For example, in one study involving 951 adolescents, researchers found that those who had used hookah tobacco in the last 30 days concurrently used multiple tobacco products including cigarettes (74.7 percent) and cigars, cigarillos, and/or little cigars (48.1 percent) (Ref. 127). Given that waterpipe smoking has been found to increase one's risk of nicotine dependence, this tendency towards dual use is particularly concerning (Ref. 93). Regular waterpipe smokers evidence similar withdrawal and craving symptoms as cigarette smokers (Ref. 128). Engagement in waterpipe tobacco product use among individuals that would otherwise remain tobacco naïve is of great concern, as about half of waterpipe users are non-current cigarette smokers (Ref. 129). Waterpipe smoking frequency predicts regular cigarette use 8 months later among adolescent males (Ref. 130). Among high school non-smokers and experimental smokers, there was a strong association between age 20/21 smoking and waterpipe use: Previous non-smokers were more likely to smoke cigarettes if they use waterpipes, suggesting that waterpipe use may have preceded cigarette use (Ref. 131). College students with waterpipe experience, but no cigarette use, were more likely to express intent to try a cigarette soon (Ref. 26).

A cross-sectional health risk survey of approximately 4,500 high school students revealed that high school-aged cigar smokers are more susceptible to future cigarette smoking than nonusers. Specifically, in students who tried cigars (defined as cigars, little cigars, and cigarillos) first, 14.6 percent used cigarettes only, 12.2 percent used cigars only, and 43.6 percent used both cigarettes and cigars (Ref. 117).

VI. Proposed Minimum Age and Identification Restrictions

Currently, there are Federal minimum age and identification requirements for cigarettes and smokeless tobacco prohibiting sales of these tobacco products to individuals under 18 years of age. This proposed rule would extend those requirements to all covered tobacco products in order to curb initiation of other tobacco products among youth. We note that the definition of ''covered tobacco products'' would depend on the universe of tobacco products that would be covered this rule. Under Option 1, all cigars would be covered and, therefore, these additional provisions would apply to all cigars. However, under Option 2, only a subset of cigars (i.e., ''covered cigars,'' which would exclude ''premium'' cigars) would be covered by the rule and, therefore, these additional provisions would apply to only a subset of cigars. Under section 906(d) of the Tobacco Control Act, the minimum age and identification restrictions FDA is proposing here are appropriate for the public health.

A. Effectiveness of Proposed Restrictions and Section 906(d) Standard

The age and identification restrictions that FDA is proposing on the sale of covered tobacco products meet the requirements of the section 906(d) standard and are appropriate for the protection of the public health. The goal of the proposed age restrictions is to reduce youth initiation of tobacco use, thereby reducing the number of people who suffer from tobacco-related illnesses and death and the number of people who are exposed to secondhand smoke.

Currently, not all states have laws preventing the sale of tobacco products that would be covered by this rule to those under the age of 18. This proposed action to prohibit sales of covered tobacco products to individuals under 18 years of age at a minimum would be the most effective way to keep youth from going to another nearby jurisdiction that sells tobacco products to those under age 18. FDA intends to work with retailers to emphasize the importance of continued training for employees so that they will understand both the importance of the minimum age restriction as well as how to enforce it. The Center for Substance Abuse Prevention Draft Conference Edition Report on Responsible Retailing outlines how a ''comprehensive program of responsible retailing, properly designed and implemented, can contribute to the elimination of sales of tobacco and other age-restricted products to minors'' (Ref. 132 at 1) (see Refs. 133 and 134). FDA intends to use an aggressive nationwide enforcement program for any new Federal program which will, we believe, increase compliance and deter youth consumption of addictive tobacco products. FDA's current nationwide tobacco retail inspection enforcement program, which is implemented through contractual agreements between FDA and state or local partners, where feasible, will be able to incorporate new products or policies to provide additional uniformity to the enforcement of tobacco laws and regulations.

There is clear evidence that actively enforced minimum age requirements and identification requests in the states are useful in reducing illegal sales of tobacco to youth (Refs. 135, 136, 137, and 138). A literature review found that every intervention that prevented the sale of tobacco to minors has been associated with an observed reduction in tobacco product use by youth (Ref. 138). The author reviewed more than 400 published articles and 400 government reports concerning tobacco sales to minors (id.). There were 19 interventions in which the sale of tobacco to minors was disrupted (id.). In each case, the intervention was followed by a decline in youth tobacco use. Contrary to claims that efforts to disrupt the sale of tobacco to minors are futile because social sources would ''fill the void making tobacco more available,'' adolescents who purchase tobacco products ''are the primary social sources for other youth'' (id.). The disruption of commercial distribution to youth ''creates supply shortages, driving up the cost of tobacco on the street and discouraging sharing among peers as smokers protect their supply'' (id.). Declines in tobacco product use were seen in rural communities, suburban communities, across large regions or states, and countrywide. Moreover, among all the materials reviewed, none demonstrated a significant reduction in commercial distribution of tobacco to minors unaccompanied by reductions in the number of youth who use tobacco (id.). The author concluded that all available evidence indicates that interventions that successfully disrupt the sale of tobacco to minors can be expected to reduce the rate of tobacco product use among adolescents.

Three small, cross-sectional studies have also found reductions in tobacco product use following decreases in tobacco accessibility (Ref. 133 citing Refs. 134, 139, and 140). For example, the investigators in one study surveyed more than 600 7th and 8th grade students in Woodridge, IL, before and approximately 2 years after a local law on retailer licensing and youth possession of tobacco was passed (Ref. 139). With active enforcement of the law, illegal sales of tobacco to individuals under 18 years old were reduced from 70 percent of the sample of retailers surveyed to 5 percent at the end of the 2-year compliance review period (id.). Experimental smoking among middle school students studied dropped from 46 percent to 23 percent 2 years after the law's passage, and

regular smoking rates dropped from 16 percent to 5 percent (id.).

Similarly, another study examined youth smoking rates and purchase behaviors in a longitudinal analysis of 12 communities (Ref. 141). Test purchases were conducted to determine whether merchant compliance with access restrictions can lead to lower youth smoking rates. Then these levels of merchant compliance were compared with youth smoking rates. From 1992 to 1996, frequent smoking increased by 28 percent in the communities with retailer compliance levels less than 80 percent, but frequent smoking decreased by 16 percent in the communities with retailer compliance levels greater than 80 percent (id.).

Moreover, a number of studies have observed at least some correlation between the enforcement of youth access restrictions and reduced tobacco product use among youth when enforcement is coupled with educational campaigns, and FDA has conducted and plans to continue to conduct various types of public education regarding tobacco products. For example, in a four-community study in Monterey County, CA, where sales of tobacco products to individuals under 18 were prohibited, researchers studied an intervention group (with educational campaigns for the community and merchants) and a control group. In communities with the tobacco intervention, the proportion of stores selling tobacco to individuals under 18 dropped from 75 percent at baseline to 0 percent after 34 months; while in the control communities, the proportion of stores selling tobacco to minors only dropped from 64 percent to 39 percent (Ref. 133). Additionally, 7th graders in the intervention communities were significantly less likely to use tobacco over the course of the study (13.1 percent at baseline vs. 12.6 percent post-test), while 7th graders in the comparison communities were significantly more likely to use tobacco (15.6 percent at baseline vs. 18.6 percent post-test) (id.). In communities using tobacco intervention policies, treatment effects were evident among the youngest students (7th grade at baseline) but were not sustained at 34 months, and no significant effects were found for 9th and 11th graders (id.). Based on these data, the authors concluded that there was some evidence, albeit inconsistent, that reducing tobacco sales to individuals under 18 lowered tobacco product use among this age group, and that younger adolescents are more responsive to educational campaigns for the community and merchants than older adolescents (id.).

Similarly, in a randomized community trial involving 14 Minnesota communities (7 intervention communities and 7 control communities), communities that passed a comprehensive youth tobacco access ordinance showed less pronounced increases in adolescent daily smoking relative to control communities (Ref. 137). During the intervention period, there was statewide media attention on youth access to tobacco. Additionally, during the intervention period, state retailer associations and the tobacco industry launched statewide campaigns to educate retailers and their employees about Minnesota tobacco age-of-sale law and ways to avoid violating it (id.). The authors posited that, to the extent both intervention and control communities showed reductions in illegal sales to individuals under 18, the community mobilization and education portions of the intervention may have played a role in increasing the perception among students that they would not be able to purchase tobacco or discouraged them from trying to do so (id.).

FDA is aware of two studies that question the link between actively enforced youth access laws and tobacco use. One 2-year controlled study in six Massachusetts communities (from 1994 to 1996) that examined the impact of enforcement of youth access restrictions on smoking behaviors found that despite a significant and continued increase in compliance by retailers, young people reported little decline in their ability to purchase tobacco products. The study also found no relationship between merchant compliance and smoking prevalence (Ref. 142).

In addition, a meta-analysis of previous studies showed no detectable relationship between the level of merchant compliance with youth access laws and 30-day or regular smoking prevalence and no visible evidence of a threshold effect after compliance reached a certain level (e.g., 80 or 90 percent) (Ref. 143). Although the authors noted that one limitation of the analysis was the relatively small number of controlled studies evaluating the effects of youth access restrictions on teen smoking prevalence, they observed that the consistency of the results increased their confidence in the study's conclusions (id.). Researchers speculated that there was no reported reduction in youth access, despite increased compliance rates by retailers, either because youth went to other communities that did not rigorously enforce the minimum age requirement to purchase cigarettes or tricked retailers into believing that they were older (id.). While more data and a larger sample size are needed to support this hypothesis, these researchers did state that FDA regulations setting a national standard for tobacco sales could have an effect on tobacco product use nationwide if there were careful monitoring of compliance (id.).

Several studies discussed potential reasons for the mixed findings on the impact of youth access laws on youth tobacco use. Researchers found that when youth access laws exist and are enforced, youth users of tobacco, particularly beginning users, may resort to social sources of tobacco (such as friends, parents, or strangers) or to stealing (either from parents or from tobacco product retailers) (Ref. 141). This phenomenon may explain why some data show that where decreases in youth tobacco product use do result from youth access restrictions, the decreases are concentrated among heavier teen smokers and/or frequent smokers (Refs. 141 and 144).

Although the literature is mixed on the role compliance and enforcement plays in the ability of youth access restrictions to affect youth tobacco use, because the minimum age and identification requirements FDA is proposing here would be Federal requirements, they would apply across the entire United States. More uniform enforcement by FDA working in conjunction with states would minimize youth's ability to circumvent the current patchwork of youth access restrictions by attempting to buy tobacco products in jurisdictions where enforcement may be more lax. At least one study shows that perceived accessibility to tobacco products contributes to tobacco initiation and escalation among youth (Ref. 145). Accordingly, FDA concludes that the proposed minimum age and identification restrictions, combined with comprehensive and consistent enforcement at the Federal level and in partnership with states, will decrease the likelihood of youth smoking initiation and, therefore, are appropriate for the protection of the public health under section 906(d) of the FD&C Act.

The proposed minimum age and identification restrictions for covered tobacco products are reasonable restrictions to curb youth tobacco product use that would not hamper adult access to these products. Adults seeking to purchase cigars or other covered tobacco products would continue to take the same steps as they had in the past to purchase these products. The only group that would find it more difficult to purchase these products would be the youth population. In addition, FDA believes

that these restrictions are necessary to prevent reinforcement of existing misperceptions by youth that certain tobacco products—those for which there are no minimum age or identification requirements—are safe for their use. The absence of such requirements for covered tobacco products could give youth a false sense of security about the safety of those products sold without these restrictions.

Moreover, the proposed rule would simplify retailer compliance with tobacco access restrictions. This restriction would make all cigarettes, smokeless tobacco, and covered tobacco products in a retailer's establishment subject to the same age and identification requirements. The proposed restrictions would make compliance less cumbersome for retailers who sell tobacco products in stores throughout the United States, because they would have a uniform age and identification requirement to enforce across their stores (rather than several state and local laws that could result in differing age restrictions and application to types of tobacco products). Currently, the state and local age restrictions vary with respect to the types of tobacco products to which they apply. For example, while Kentucky prohibits the sale of tobacco products to persons under 18, the provision does not define ''tobacco product'' in this context and, therefore, may not cover proposed deemed tobacco products such as pipe tobacco and e-cigarettes (Ky Rev Stat. § 438.310). Similarly, Delaware's age restrictions apply to any product that ''contains tobacco,'' which could be construed to apply less broadly than the proposed federal restriction that also would apply to products that are derived from tobacco (Del. Code Ann. tit. 11, §§ 1115, 1116). With a consistent Federal regulation, retailer owners would be able to more quickly train employees regarding the restriction without needing to differentiate between a variety of products that contain similar packaging and many of the same ingredients. Better retailer compliance and enforcement can make it more difficult for youth to access dangerous tobacco products, which FDA believes would, in turn, limit their use of such products.

B. Application to Proposed Vending Machine Restrictions

Section 1140.14(b)(3) of the proposed regulation would ban the sale of covered tobacco products in vending machines, unless the vending machine is located in a facility where the retailer ensures that individuals under 18 years of age are prohibited from entering at any time. This restriction is appropriate for the protection of the public health because it ensures that persons under the age of 18 cannot purchase covered tobacco products without a retailer having to verify their age and identification.

Section 1140.16(c) currently prohibits the sale of cigarettes and smokeless tobacco in vending machines except those located in facilities where individuals under 18 years of age are not permitted to enter at any time. The preamble to FDA's 1995 proposed rule regarding restrictions on youth access to cigarettes and smokeless tobacco identified numerous studies and surveys showing that significant percentages of young people are able to purchase cigarettes from vending machines (60 FR 41314 at 41324–41326, August 11, 1995). Based on studies demonstrating how easily youth and young adults could purchase cigarettes from vending machines and surveys of actual purchasing behavior, the Agency concluded that the provision would eliminate a primary source of cigarettes for at least 2 percent of 17-year-old smokers and 22 percent of 13-to-17-year-old smokers (60 FR 41314 at 41324 and 41325; 61 FR at 44396 at 44449).

As with cigarettes and smokeless tobacco, a ban on vending machine sales in places accessible to individuals under 18 would eliminate an easy means of access to covered tobacco products, especially for younger children. In addition, this proposed restriction is an important adjunct to the proposed minimum age and identification requirements. Without the proposed restriction on vending machines, use of vending machines to obtain covered tobacco products would likely circumvent the proposed minimum age and identification restrictions. For example, a 2002 review of youth access policies found that although vending machines and shoplifting represented approximately 5 percent or less of youth supply, the flow of cigarettes comes from a variety of sources (Ref. 146). If it becomes more difficult for youth to buy cigarettes over the counter, greater numbers of youth will purchase them from vending machines or older peers, or borrow or steal from parents (id.). Thus, unless vending machines restrictions are part of this rule, these well-recognized substitution effects could limit the effectiveness of the minimum age and identification restrictions FDA is proposing (Refs. 133 and 140).

Furthermore, more recent research confirms that purchases of cigarettes from vending machines occur regardless of locks, warning signs, and other physical restrictions. A 2009 German study on youth access to tobacco vending machines concluded that electronic locking devices on vending machines were not sufficient to limit youth access to tobacco. The study also found that youth were able to circumvent the electronic locking devices and still obtain cigarettes (Ref. 147). Accordingly, the proposed restriction is designed to prevent youth access to the vending machines themselves.

According to the most recent data that is currently available, tobacco product vending machine sales declined sharply in recent decades, with 2007 sales totaling $46.9 million (Ref. 148). Since 2007 there has been expansive growth in e-cigarette sales (which were negligible in 2007), and vending machine sales of e-cigarettes are not prohibited or restricted to any significant extent at the Federal, state, or local levels. The proposed rule produces public health benefits to the extent that e-cigarettes, cigars, and other proposed deemed products are currently being sold through vending machines or would be in the future.

We also note that FDA's proposed restriction regarding the use of vending machines is not intended to apply to facilities in which the retailer ensures that no person under 18 years of age is present. We believe this limitation is appropriate because this rule would prohibit access by youth without imposing additional requirements upon retailers who serve the over 18-year-old population.

VII. Proposed Required Warning Statements

FDA is proposing to require the following health warning on all covered tobacco products, as well as cigarette tobacco and roll-your-own tobacco: ''WARNING: This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.'' We note that the definition of ''covered tobacco products'' would depend on the universe of tobacco products that would be covered this rule. Under Option 1, all cigars would be covered and, therefore, this additional requirement would apply to all cigars. However, under Option 2, only a subset of cigars (i.e., ''covered cigars,'' which would exclude ''premium'' cigars) would be covered by the rule and, therefore, this additional requirement would apply to only a subset of cigars. FDA is proposing a self-certification option for manufacturers who certify that their tobacco product does not contain nicotine (and that they have data to support that assertion). Such a product would be required to

bear the statement, ''This product is derived from tobacco.''

FDA is proposing that this warning statement be required to appear on the packages and in the advertisements for all proposed newly covered tobacco products and other tobacco products for which health warnings are not otherwise required by Federal law or regulation (i.e., cigarette tobacco and roll-your-own tobacco). As discussed in section V.A, the addictive nature of nicotine in tobacco products is clear.

In 2000, in settlements with the FTC, the seven largest U.S. cigar manufacturers agreed to include warnings about significant adverse health risks of cigar use in their advertising and packaging. (See, e.g., In re Swisher International, Inc., Docket No. C–3964.)

Under the 2000 FTC consent orders, virtually every cigar package and advertisement is required to clearly and conspicuously display one of several warnings on a rotating basis, including the following:

- Cigar Smoking Can Cause Cancers of the Mouth and Throat, Even If You Do Not Inhale.
- Cigar Smoking Can Cause Lung Cancer and Heart Disease.
- Cigars Are Not a Safe Alternative to Cigarettes.
- Tobacco Smoke Increases the Risk of Lung Cancer and Heart Disease, Even in Nonsmokers.

Based on FDA's authority under section 906(d) of the FD&C Act, FDA is proposing to adopt these four cigar warning statements from the FTC consent orders—which the vast majority of cigars already use—in addition to the warning statement regarding addictiveness. These warning statements will be randomly displayed and distributed on cigar product packages and rotated in advertisements. For cigars sold individually that are not packaged, FDA is proposing that the cigar warnings all be included on a sign located at the point-of-sale at each cash register in any retail establishment where such cigars are sold. If FDA's proposal to deem tobacco products to be subject to its ''tobacco product'' authorities is finalized, FDA and the FTC will consult to harmonize national requirements for health warnings on cigar product packages and in advertisements. In addition, under Option 1, these warning requirements would now apply to all small and large cigars, not just to those manufactured by the seven companies subject to the FTC orders.

FDA's proposal that these cigar warnings be randomly distributed on packages and rotated in advertisements is consistent with the requirements established by Congress in the Tobacco Control Act for statutorily covered products. Section 4 of the Federal Cigarette Labeling and Advertising Act and section 204 of the Tobacco Control Act require the random distribution and rotation of warnings for cigarettes and smokeless tobacco products, respectively. Therefore, FDA is not proposing to treat cigars differently from currently regulated tobacco products. Further, rotation of warning labels already occurs under the FTC consent decrees. The WHO also has recognized the need to rotate health warnings for tobacco products. In the WHO's Framework Convention on Tobacco Control (FCTC),[4] an evidence-based treaty that provides a regulatory strategy for addressing the serious negative impacts of tobacco products, calls for warnings that are rotating, ''large, clear, visible and legible.'' (WHO FCTC article 11.1(b).) However, FDA recognizes that the random distribution of warning statements on cigar product packages and the rotation of statements on advertisements can result in significant costs for cigar manufacturers. Therefore, FDA requests comments on other possible methods (e.g., randomly assigning warning statements per individual cigar or Universal Product Code) to ensure that the warnings have a maximum public health impact by reaching as many individuals as possible yet do not grow stale from overuse. FDA requests comments and data showing that such alternative methods would still achieve FDA's public health goals yet would reduce costs for cigar manufacturers.

In the following sections, we discuss the bases for the proposed warning statements. We discuss how FDA's proposed health warning statements and the exercise of authority in this area meet the requirements for implementing a restriction regarding the sale and distribution of a tobacco product under section 906(d) of the FD&C Act. We also explain the importance of including the proposed health warnings on small and large cigars given the scientific evidence regarding the serious adverse health risks associated with cigar use, the age of initiation of cigar use, and the increasing popularity of cigars among youth (in particular, small cigars), as well as the fact that many of these products already display most of these warnings. In addition, we explain that these warning statements, as well as the proposed additional warning for covered tobacco products (and cigarette tobacco and roll-your-own tobacco), will effectively communicate to consumers the addictive nature of the nicotine in these products. FDA believes that consumers should clearly understand and appreciate the dangers of tobacco use. Greater awareness and understanding of the dangerous health effects of tobacco product use will help consumers better understand the potential consequences of their purchase and use of tobacco products.

A. Requiring Health Warnings Is Appropriate for the Protection of the Public Health

The purpose of health warnings is to help current and potential tobacco users understand and appreciate the serious adverse health consequences associated with tobacco product use and the addictive nature of tobacco products. Adolescents do not accurately understand the health risks associated with smoking, and smokers tend to underestimate the risk of harm (Ref. 149). FDA believes it is reasonable to apply this notion of imperfect smoking-related knowledge to other forms of tobacco product use as well. Given the dangers associated with continued use of tobacco products, FDA believes it is critical to include a warning on all such products to help consumers better understand and appreciate the addictive nature of these products.

For more than 45 years, Congress has required textual health warnings for cigarettes on product packages. Warnings in cigarette advertising have been required since the FTC issued its 1972 consent orders and since 1984 by statute. (*See* in re Lorillard et al., 80 FTC 455 (1972); Comprehensive Smoking Education Act, Pub. L. 98–474 (1984).) For almost 25 years, Congress has required textual health warnings for smokeless tobacco packages and advertisements. The FCTC also requires health warnings on tobacco product packages (article 11) and in tobacco product advertising (article 13). The 2000 consent orders between seven cigar manufacturers and the FTC required health warnings for cigar packages and advertisements. Thus, requiring health warnings on all tobacco products subject to the FD&C Act is consistent with existing laws, practices, and international standards.

The health warnings that FDA is proposing, which concern risks associated with the use of tobacco products, are clearly material with respect to the consequences that may result from the use of those products. For all covered tobacco products (as

[4] There are 168 signatories to the WHO's Framework Convention on Tobacco Control as of August 2010. At this time, the United States is a signatory but has not ratified this treaty.

well as cigarette tobacco and roll-your-own tobacco) that contain nicotine, the proposed regulation would require a warning about the addictive nature of nicotine in the product. For small and large cigars, the warnings also convey information about health consequences, including certain cancers, cardiovascular disease, and effects on others exposed to secondhand smoke. It is important for consumers who are making purchasing decisions to understand that, unlike most other consumer products, once tobacco product use is initiated, it can be very difficult to stop using the product.

Consumers also may be unaware of the presence and addictive nature of nicotine in all of these products, as they can be the first tobacco product that a young person uses before progressing to cigarette smoking or use of other tobacco products, as discussed in section V. In addition, once a user becomes addicted, he or she likely would increase use and, therefore, increase his or her risk of suffering from other negative health effects given the dose-response relationship associated with many of these products (Ref. 49). Therefore, the warnings FDA is proposing would provide highly material information that all consumers should know about the consequences of using tobacco products. Failure to disclose material facts about tobacco products, such as the presence and addictive nature of the nicotine in the products, is likely to mislead consumers. *See* In re Lorillard, et al., 80 FTC 455 (1972) (consent order resolving charges that failure to disclose statutory health warning for cigarettes in cigarette advertising was deceptive and unfair). See also In re Swisher International, Inc., Docket No. C–3964; In re Havatampa, Inc., Docket No C–3965; In re Consolidated Cigar Corp., Docket No. C–3966; In re General Cigar Holdings, Inc., Docket No. C–3967; In re John Middleton, Inc., Docket No. C–3968; In re Lane Limited, Docket No., C–3969; In re Swedish Match North America, Inc., Docket No. C–3970 (consent orders resolving allegations that failure to disclose the adverse health consequences of cigar use was deceptive and unfair).

The proposed requirements to include health warnings on tobacco product packages and in advertisements also would satisfy the standard in section 906(d) of the FD&C Act, which allows the Agency to issue a regulation to require restrictions on the sale or distribution of a tobacco product, if the regulation ''would be appropriate for the protection of the public health.'' According to the statute, the determination as to whether a regulation would be appropriate for the public health must be based on the risks and benefits to the population as a whole (including tobacco users and nonusers) and taking into account how the regulation could impact the likelihood of existing users stopping use of the product and the likelihood of new users starting to use the product (section 906(d)(1)(A) and (B) of the FD&C Act).

The public health benefits to both users and nonusers from this regulation would be significant. As discussed in sections V.B and VII.E, there is substantial evidence that certain tobacco products within the scope of this regulation cause serious diseases and death and that secondhand smoke causes deadly diseases in nonsmokers. The addictive nature of tobacco products also has been well-documented (see section V.A). These proposed warnings would help ensure that youth and young adults, who may be more susceptible to the addictiveness of nicotine, have a greater awareness of the dangers associated with these products before they might become addicted. As discussed in section VII.B, researchers have found that tobacco health warnings on product packages and in advertisements can effectively provide this important health information to consumers. FDA believes that the proposed warnings would help both users and nonusers better understand and appreciate these dangers.

B. Effectiveness of Warnings

The use of tobacco packages to help consumers better understand and appreciate tobacco-related health risks has a number of advantages. The frequency of exposure is high. In addition, package warnings are delivered both at the time of tobacco product use and at the point of purchase. Thus, the messages are delivered to tobacco users at the most important times—when they are considering using or purchasing the tobacco product. The messages on packages also help the public at large, including potential tobacco users, better understand and appreciate the health and addictiveness risks of using the products (Ref. 56). Requiring health warnings in advertisements similarly is an important means of helping consumers better understand and appreciate the health consequences of tobacco use. (*See* In re Lorillard et al., 80 FTC 455 (1972); Federal Cigarette Labeling and Advertising Act (FCLAA), 15 U.S.C. 1331 *et seq.;* Comprehensive Smokeless Tobacco Health Education Act of 1986 (CSTHEA), 15 U.S.C. 4402 *et seq.*)

For the communication to be effectively understood and appreciated, consumers must notice and pay attention to the warning. As discussed at length in this section, the size, placement, and other design features of the warning play a role in the effective communication of the underlying message. As discussed in sections VIII.C.2 and VIII.C.3, the proposed regulation would require that the health warning statements comprise 30 percent of the area of the two principal display panels of the package to help ensure that consumers notice and process the critical information conveyed in the required warning statements. The IOM, Congress, and Article 11 of the FCTC recognize the importance of having the warnings cover at least 30 percent of the area of the principal display panels, and users are more likely to recall warnings that are in a larger size and that appear on the front/major surfaces of the tobacco package (Ref. 58; 15 U.S.C. 4402(b); FCTC article 11). Because the warnings would be required to appear on 30 percent of the two principal display panels (which includes the front of the package), FDA believes that the proposed warnings will be effective in helping consumers better understand and appreciate critical information. We are proposing a 30-percent size requirement for product packages to be consistent with Congress' size requirements for similar text-only warnings for smokeless tobacco under CSTHEA (15 U.S.C. 4402(a)(2)(A)), rather than the 50-percent size requirement that Congress chose for graphic warnings on cigarette packages. We invite comment on the appropriateness of this size requirement.

In addition, because a large font size increases the impact and legibility of the warning, FDA is proposing that the warning statement on packages and advertisements appear in the maximum font size that would fit into the warning area. Given the variety of packaging sizes for the tobacco products at issue in this regulation, it is not feasible to specify a single font size for all products within the scope of this regulation. Therefore, FDA is proposing that the font be as large as possible to ensure that the required warning statement will be noticed by consumers regardless of the package size. Research has shown that using the largest possible lettering can increase warning effectiveness and increasing font size aids communication (Ref. 150). Similarly, the proposed requirement that the warnings appear in black text on a white background or

white text on a black background will improve the legibility and noticeability of the warnings (Refs. 58 and 150).

The format requirements that FDA is proposing are similar to those included in a 2001 European Union Directive, which have been shown to increase the effectiveness of health warnings. European Union (EU) Directive (2001/37/EC) requires that tobacco warnings in all member countries meet certain minimum standards that are similar to those that FDA is proposing (i.e., EU required health warnings comprise 30 percent of the area on the front of package and 40 percent on the back of the package; black Helvetica bold type on a white background; warnings to occupy the greatest possible proportion of the warning area set aside for the text required; messages centered in the warning area and surrounded by a black border of 3 to 4 millimeters (mm) in width). Prior to the 2001 Directive, warnings in most European Union countries were very small and general. In one study conducted for the European Commission, a majority of respondents considered the Directive's new warning format more effective and more credible than the previous format (Ref. 151). A study of Spanish university students also concluded that text warnings based on the Directive significantly increased perceptions of the risk of tobacco products (Ref. 152). Additionally, in a study of similar warnings in the United Kingdom, smokers indicated that their awareness of the warnings increased along with thoughts about the health risks of smoking (Ref. 153).

FDA believes that the fundamental similarities between cigarettes and smokeless tobacco and other tobacco products allow for the application of data regarding the effectiveness of cigarette and smokeless tobacco warnings to warnings for other tobacco products. Research dating back to the late 1980s has found that small warning labels for cigarettes and small warning labels for smokeless tobacco products alike were rarely noticed and suffered from low rates of recall among youth (Refs. 154, 155, and 156). For example, in one eye-tracking study, adolescents were asked to view five cigarette ads that included a health warning (Ref. 155). The average viewing time of the health warning was only 8 percent of the total time spent viewing the ads, and participants subsequently demonstrated a low recall of the warnings (id.). Similarly, a study of health warnings on oral snuff and chewing tobacco pouches revealed that fewer than half of the subjects recalled seeing the warnings and approximately one-third of those who saw the warnings recalled the content (Ref. 156). These studies were all based on the small warning sizes then required by United States law. As discussed above, the Tobacco Control Act requires substantially larger warnings for cigarettes and smokeless tobacco products, and this proposed rule, if finalized, would require similarly sized warnings for other tobacco products. Warning size clearly matters, as recall increases significantly with font size (Ref. 156 at ii61). In a study of recall of health warnings in smokeless tobacco ads, conducted with 895 young males, 63 percent of participants recalled a high contrast warning in 10-point font; doubling the warning size to a 20-point font increased recall from 63 percent to 76 percent representing a 20-percent improvement in recall (Ref. 156 at ii61-ii62). Research on cigarette-package warnings confirms that larger warnings are better noticed and more likely to be recalled (Ref. 54 at 810; ref. 58 at App. C–3; ref. 150). These studies support FDA's belief that requiring that the proposed warnings appear in the maximum font size will improve their noticeability.

The content of the proposed messages also indicates that they should help consumers understand and appreciate the relevant health risks. In a qualitative study conducted for Health Canada, researchers tested text-only smokeless product health messages, some of which are similar to FDA's proposed health warnings for cigars. One of the tested Canadian messages (This product causes mouth diseases) generally was considered to be a low-impact message, which participants felt was not a deterrent but merely a reminder (Ref. 159 at 11). However, FDA's proposed message (adopting the existing FTC warning language) regarding mouth diseases is more specific and alerts consumers that not only do small and large cigars cause ''mouth diseases,'' they also cause *cancer* of both the mouth and the *throat.* As the IOM explained with respect to cigarette warnings, specific unambiguous warnings are more likely to be noticed and less likely to be discounted than vague warnings (Ref. 58 at App C–3).

Another Canadian tested message (Use of this product can cause cancer) is similar to three of FDA's proposed warning messages. Most respondents in the Canadian study considered this message to be credible, although some found that the message was ''too vague to be effective'' (Ref. 159 at 12). However, FDA's proposed health warnings, adopting the existing FTC language, are more specific than the Canadian message (referring to specific types of cancers, noting the risk of mouth and throat cancers even for those that do not inhale, and alerting users that the smoke released from their product can even cause cancer in nonsmokers) (Ref. 58). FDA believes, therefore, that the proposed warnings will be effective in helping current and potential smokers understand and appreciate the adverse health consequences related to cigar smoking.

Researchers have studied the relationship between substance use and memory for health warnings on cigarettes, smokeless tobacco, and alcohol. For smokeless tobacco, researchers confirmed a statistically significant correlation between use and recognition memory for the product's health warnings (Ref. 157 at 147).

Although there has not yet been extensive research regarding the effectiveness of health warnings on tobacco products other than cigarettes (Refs. 155, 156, 157, 158), existing studies support the use of these messages. Canada's text-only health warning messages for chewing tobacco and oral snuff packages (similar to the ones FDA is proposing to apply to cigars) were issued in 2000 (Ref. 159), which the qualitative study described above found to be effective at educating consumers about the dangers associated with their use. In the instances where consumers believed the messages were ineffective, FDA is proposing messages that differ significantly from the Canadian messages in that they provide additional, specific health information for consumers.

FDA intends to conduct research and keep abreast of scientific developments regarding the efficacy of the final health warnings and the ways in which their efficacy could be improved. We will use the results of our monitoring and such research to help determine whether any of the warning statements (if finalized) should be revised in a future rulemaking. Under Option 2, these warning label requirements would only apply to covered cigars and not to premium cigars.

C. Proposed Addictiveness Warning

To FDA's knowledge, all tobacco products currently on the market contain nicotine (Ref. 49 at 12). The Surgeon General has long recognized the addictive nature of tobacco products due to the presence of highly addictive nicotine that can be absorbed into the bloodstream (See, e.g., Ref. 49 at 6–9). Nicotine is psychoactive and can serve as a ''reinforcer'' to motivate tobacco-seeking and tobacco-using behavior (Ref. 49 at 7). The patterns of nicotine

use are regular and compulsive, and a withdrawal syndrome usually accompanies tobacco abstinence (Ref. 49 at 13). Tolerance develops to nicotine such that repeated use results in diminished effects and can be accompanied by increased intake (Ref. 49 at 13). The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to other drugs (Ref. 49 at ii). Leading national and international organizations, including WHO, the American Psychiatric Association (APA), the American Cancer Society, and the American Academy of Addiction Psychiatry, have recognized chronic tobacco product use as a drug addiction (Ref. 49 at iii). WHO and APA do not use identical definitions of ''addiction''; however, they have in common several criteria for establishing a drug as addicting—such as the fact that the user's behavior is largely controlled by a psychoactive substance; the drug is reinforcing and the user can develop a tolerance to it; and withdrawal can occur following abstinence—and nicotine meets all these criteria (Ref. 49 at iv). See section V.A for additional information regarding the addictiveness of tobacco products.

Accordingly, FDA proposes to help consumers better understand and appreciate the addictiveness of tobacco product use by adding warnings on packages and in advertisements for all covered tobacco products and those products not already requiring a health warning under Federal law or regulation (i.e., cigarette tobacco and roll-your-own tobacco). FDA proposes that such warning would state: ''This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.''

1. Consumer Perceptions Regarding Addictiveness of Tobacco Products

This warning is particularly important given consumers' erroneous and unsubstantiated beliefs that tobacco products other than cigarettes are either less addictive than cigarettes or are not addictive at all. For example, in a survey of high school students, 46.3 percent of participants—83.3 percent of whom were waterpipe users—believed their product was less addictive and safer than cigarettes (Ref. 90 at 3, 4) (also citing several additional studies where young adult waterpipe users reported that their tobacco product was less addictive). Also, in a qualitative study prepared for Health Canada consisting of smokeless tobacco, cigars, and pipe users between the ages of 16 and 60 plus, most large cigar smokers thought that their product was less addictive than cigarettes or not addictive at all because they smoked for pleasure or did not smoke daily (Ref. 158 at 1, 40). Small cigar smokers in this study were split as to whether they believed their product of choice was addictive (Ref. 158 at 41). While most chewing tobacco and snuff users tended to believe these products were as addictive as cigarettes, some believed their chew was not addictive because the taste was such a turnoff (id.). Not only do these studies further indicate the need for a warning statement to ensure that consumers recognize that nicotine is addictive, but they also indicate that broader education regarding the addictiveness of tobacco products also may be necessary given that consumers in the Canadian study incorrectly believed an individual could not be addicted to a product that he or she ''disliked'' or did not use every day (id.).

FDA also believes that this warning is necessary to reduce youths' widely held but erroneous belief that certain tobacco products—those for which there currently are no warnings regarding addictiveness—are safe for their use (Ref. 51). Youth believe that they will be able to stop using tobacco whenever they want to do so (id.). However, because of the addictiveness of nicotine, they often have great difficulty doing so. Thus, addiction warnings are particularly important for youth. Health warnings are currently required for cigarettes and smokeless tobacco under the Tobacco Control Act. The absence of a health warning requirement for other tobacco products could reinforce the existing false sense of security that youth have about the safety of those products.

Further, many consumers believe that the use of e-cigarettes will help them quit smoking, even though this has not been proven by long-term studies of significant numbers of e-cigarette users, and some consumers forego proven cessation methods due to those unsubstantiated beliefs. For example, in the ITC Four-Country Survey, 75.4 percent of respondents indicated that they used e-cigarettes to help them reduce their smoking and 85.1 percent reported using e-cigarettes to help them quit smoking (Ref. 36). In a survey of current and former smokers, 80 percent of respondents reported that they used e-cigarettes to help them reduce the number of cigarettes they use and 65 percent stated they used e-cigarettes to try to quit using cigarettes (id.). Section IV.D discusses the possible reduced usage of cigarettes that may be associated with e-cigarettes and the limitation of existing studies. We do not currently have sufficient data about these products to determine what effects e-cigarettes have on the public health.

2. Alternative Statement for Products Without Nicotine

The products for which FDA is proposing health warnings under this rule all contain nicotine. FDA is not aware of any currently marketed tobacco product that does not contain nicotine. However, in the event that such products are developed, FDA proposes that manufacturers of such products submit a certification of that fact (and the fact that they have the data to support this assertion) to FDA. Products for which such a certification has been submitted would not contain any warning that would clearly indicate that it is a tobacco product. Accordingly, FDA is proposing that such products include the following alternative statement on their product packages and in their advertisements: ''This product is derived from tobacco.'' FDA believes it is important to alert consumers and retailers as to which items are tobacco products. Even if a tobacco product does not contain nicotine, it can still contain other addictive chemicals (like anabasine or nornicotine, discussed in the preamble) or dangerous toxicants. Therefore, FDA believes consumers should be aware that the product is, in fact, a tobacco product. In addition, the statement would alert consumers as to which products would require identification for purchase and increase retailer awareness of the products for which they must verify the age of consumers. FDA requests comments on this alternative statement.

3. Request for Comments Regarding Addictiveness Warning for Certain Categories of Tobacco Products

FDA realizes that while all tobacco products are potentially harmful and potentially addictive, different categories of tobacco products may have the potential for varying effects on public health. For example, some have advanced views that certain new tobacco products that are non-combustible (such as e-cigarettes) may be less hazardous than combustible products, given the carcinogens in smoke and the dangers of secondhand smoke. Thus, FDA is seeking comments, including supporting research, facts, and other evidence, as to whether all tobacco products should be required to carry the proposed addictiveness warning and if different warnings should be placed on different categories of products.

In addition, we note that this requirement would apply to products that are derived from tobacco, and not

just products that themselves contain tobacco, based on the definition of ''tobacco product'' in section 201(rr) of the FD&C Act. As a result, FDA recognizes that the use of the words ''tobacco product'' in the warning might be thought to have the potential to confuse consumers. Accordingly, FDA request comments, including supporting facts, research, and other evidence regarding the following questions:

- Do the words ''tobacco product'' in this proposed warning have the potential to cause confusion for consumers? If so, what are the product types where such a warning could potentially confuse consumers?
- If there are concerns about the use of the word ''tobacco product,'' what other language should FDA consider utilizing in this proposed warning?
- Would such other proposed language still have the ability to notify consumers that certain products (especially those that look like candy) are, in fact, tobacco products and potentially harmful and/or addictive?

D. Age of Initiation for Cigar Smokers

FDA's proposed warning statements are intended to educate both youth and adults regarding the dangerous effects of cigar smoking in order to provide consumers with the information to better understand the potential consequences of their decisions, and in the case of youth, to prevent youths from initiating use. There is a common misconception that young people do not smoke cigars, and it is therefore unnecessary to warn them of the dangers of cigar smoking (Ref. 28 at 13). However, as discussed in this document, data show that a substantial number of young people smoke cigars (defined as cigars, little cigars, and cigarillos). Each day in the United States, more than 3,000 youth under age 18 smoke their first cigar (Ref. 81). In addition, young people who use both cigars and cigarettes are more likely to be *frequent* users of both products (Ref. 117 at 647). Therefore, the proposed warnings are necessary to alert young people to the dangers of initiating cigar use, as well as to help current cigar smokers better understand and appreciate the health risks of using cigars.

Young adults appear to be particularly interested in cigarillos, as opposed to large cigars. The close resemblance of small cigars and many cigarillos to cigarettes have led consumers, particularly children and young adults, to substitute them for cigarettes (Ref. 160). Researchers assessing studies designed to measure cigar use have found significant increases in reported cigar prevalence when they reproduced the studies but added examples of little cigar and cigarillo brands, indicating consumer confusion between little cigars and cigarillos on one hand, and cigarettes on the other, as well as indicating consumer substitution of little cigars and cigarillos for cigarettes. For example, researchers re-administered the Youth Risk Behavior Survey to six Midwestern high schools and included a popular little cigar brand name to the item measuring cigar use (Ref. 65). When the survey was initially administered, the local rates of cigar and cigarette use were consistent with national rates (id.). However, when the cigar item was modified to include a little cigar brand-specific example, the percentage of high school students reporting cigar use nearly doubled—jumping from 12.9 percent to 20.7 percent (Ref. 65). Likewise, researchers assessing data from the 2009 Virginia Youth Tobacco Survey found that 57.3 percent of respondents who used a popular brand of little cigars and cigarillos erroneously reported no general cigar use (Ref. 66). These findings are consistent with focus group data for 2001, where researchers found that respondents generally (but wrongly) did not think inexpensive cigarillos or little cigars were ''cigars,'' and where the rate of self-reported cigar use increased by 37.5 percent once the definition of cigar was clarified (Ref. 161). Moreover, in a secondary analysis of cigar use by persons aged 18 to 25 from the National Survey on Drug Use and Health (2002–2008), researchers determined that the top five cigar brands most frequently smoked by current cigar users include little cigars or cigarillos (Ref. 162).

Research also shows that youth may be initiating cigar use as much as cigarette use. The National Survey on Drug Use and Health found that of the more than 2.9 million people aged 12 and above who first used cigars of any type in 2010, nearly 1.1 million (or approximately 37 percent) were under the age of 18 at initiation (Ref. 82). (This amounts to nearly 3,000 youths initiating cigar use every day.) By comparison, of the nearly 2.4 million people aged 12 and above who first used cigarettes in 2010, 1.4 million (or approximately 58.3 percent) were under the age of 18 at initiation (Ref. 82). (This amounts to 3,800 youths initiating cigarette use each day.) A 2009 study found similar results, reporting that approximately 14 percent of high school students had smoked cigars at least 1 day during the previous 30-day period, compared with 19.5 percent who had smoked cigarettes at least 1 day during the same period (Ref. 167 at 10, 12).

The Office of Inspector General of the Department of Health and Human Services (HHS) also published figures in 1999 regarding the patterns of cigar use. According to their survey, 76 percent of high school and junior high teens knew other teens about their age who smoked cigars (Ref. 35 at 4). While most teens' first exposure to tobacco was with cigarettes, 22 percent of students in this survey tried cigars first (Ref. 35 at 6). This is of particular concern given that young people who start as cigar-only users are more susceptible to becoming future cigarette users than other youth (id.). This report also notes that manufactured cigars (i.e., most types of small cigars and cigarillos) are most commonly used by teens due to their ease of purchase, low cost, sweetened flavors, and pleasant aromas (Ref. 35 at ii). More recent surveys have confirmed the popularity of small cigars and cigarillos is due at least in part to the availability of a wide variety of flavors (Ref. 162 citing Ref. 163; Ref. 164; Ref. 165). Young consumers appear to view little cigars and cigarillos as being less expensive and more convenient than large and premium cigars, contributing to their popularity (Ref. 160).

In addition, according to the 2001 National Household Survey on Drug Abuse, the number of younger children initiating cigar use is beginning to exceed the number of young adults initiating cigar use, further highlighting the importance of health warnings. From 1965 until 1996, there were more cigar initiates among 18- to 25-year olds than among 12- to 17-year olds (Ref. 166). Yet, from 1997 to 2000, the number of new cigars users in the 12- to 17-year old group exceeded the 18- to 25-year-old initiates (id.).

In some states, cigar smoking among youth may be even more popular than cigarette smoking. For example, the 2009 Youth Risk Behavior Surveillance study found that 18 percent of high school boys in Massachusetts were cigarette smokers and 22 percent were cigar smokers (Ref. 167 at 66, 72). Similarly, an Ohio survey of 4,335 students showed cigars to be the most popular tobacco product among high school students (Ref. 11 at 647). (See also Ref. 164.) These data indicate that small and large cigars are no longer an ''alternative'' to cigarette use, but rather they are the most popular tobacco product for many young people.

E. Proposed Required Warning Statements for Small and Large Cigars

FDA is proposing five health warning statements for use on all cigar packages

and in all cigar advertisements. Under Option 1, all cigars would be required to display these health warning statements. Under Option 2, only a subset of cigars (i.e., those defined as ''covered cigars,'' which would exclude ''premium'' cigars) would be required to display these warning statements. The first four warnings (discussed in this document) are identical to four of the warnings included in the seven consent orders that the FTC entered into with the largest mass marketers of cigars. (See, e.g., In re Swisher International, Inc., Docket No. C–3964.) FDA is not proposing the fifth FTC warning (Tobacco Use Increases The Risk Of Infertility, Stillbirth And Low Birth Weight), because although cigarette smoking has been shown to cause these health effects and cigar smoke is similar, the Agency is not aware of studies specifically linking cigars to these reproductive effects. FDA requests comment on its proposal to require the use of only four of the five current FTC warnings for cigars.

1. WARNING: Cigar Smoking Can Cause Cancers of the Mouth and Throat, Even if You Do Not Inhale

The NCI's Monograph No. 9 provides a comprehensive, peer-reviewed analysis of the trends in cigar smoking and potential public health consequences. NCI identified a dose-response relationship for cigar smoking and oral, laryngeal, pharyngeal, and esophageal cancers, finding an increased risk of these diseases with greater numbers of cigars smoked per day and deeper inhalation (Ref. 28 at 120–130). Cigar smoking can cause cancers of the mouth and throat even for smokers who do not inhale (id.). As a result, cigar smokers who do not inhale have disease risks higher than those who have never smoked (Ref. 28 at ii). FDA believes that a warning regarding these potential health consequences is necessary because of consumers' widely held, but erroneous, belief that cigars are safe products if users do not inhale the smoke (id.).

''The data clearly establish cigar smoking as a cause of oral cancer'' (Ref. 28 at 127). Regular cigar smokers who have never smoked cigarettes, including those who do not inhale, experience significantly elevated risks for oral, laryngeal, pharyngeal, and esophageal cancers (Ref. 28 at ii and Ref. 62 at 738). While former cigarette smokers who currently smoke cigars are more likely to inhale deeply than cigar smokers who never smoked cigarettes, ''the mouth and oral cavity are exposed to the carcinogens in smoke whether the smoke is inhaled or not'' (Ref. 28 at 120). In addition, cigar smokers, including those who do not inhale, have a similar risk of mouth and throat cancer as do cigarette smokers, with an overall risk 7 to 10 times higher than for those who have never smoked (Ref. 28 at 125). This similarity in risk is likely due to the similar doses of tobacco delivered directly to the oral cavity and esophagus by cigars and cigarettes (Ref. 30 at 738). Likewise, NCI researchers found that the data taken as a whole support cigar smoking as a cause of laryngeal cancer, noting that the relative risk for those who smoke five or more cigars per day or who inhale moderately or deeply approaches the risk for cigarette smokers (Ref. 28 at 130).

The data also establish cigar smoking as a cause of esophageal cancer (id.). Cigar smokers, regardless of whether they inhale, receive a high smoke exposure to the mouth and tongue, and the esophagus is exposed to the carcinogens of tobacco smoke, which collect on the mouth's surface and are swallowed with saliva (id.). The risk of esophageal cancer is several times higher among cigar smokers than among those who have never smoked, and the relative risk of occurrence is similar to that for cigarette smokers (id.).

Several multinational research studies also have noted that cigar smoking can cause oral cancers and other cancers, even for those who do not inhale. For example, the European Prospective Investigation into Cancer and Nutrition (EPIC) examined the effects on cancer incidence for exclusive cigar smokers, and for cigar smoking in combination with cigarettes, on 102,395 men from Denmark, Germany, Spain, Sweden, and the United Kingdom (Ref. 168 at 2402). According to the EPIC study findings, exclusive cigar smokers who did not inhale had approximately a two-fold higher risk of lung, upper aerodigestive tract (which includes oral cavity, pharynx, larynx, and esophagus), and bladder cancers combined, compared to those who never smoked, and this risk was six- or seven-fold higher in cigar smokers who inhaled (Ref. 168 at 2405). This increased risk was smallest for smokers who had quit both cigarettes and cigars in the past and intermediate for those who switched to only cigars, demonstrating the additional risk associated with cigar smoking per se (Ref. 168 at 2409). Researchers confirmed a carcinogenic effect from cigar smoking for upper aerodigestive tract cancers and found that the risk of these hazards increased with increased duration of smoking over the smoker's lifespan, increased intensity per episode, and increased degree of smoke inhalation per episode (id.).

Similarly, the WHO International Agency for Research on Cancer (IARC) published a monograph evaluating the carcinogenic risk to humans from tobacco smoke and involuntary smoke exposure. The IARC explained: ''Cigar and/or pipe smoking is strongly related to cancers of the oral cavity, oropharynx, hypopharynx, larynx, and oesophagus, the magnitude of risk being similar to that from cigarette smoking. These risks increase with the amount of cigar . . . smoking and with the combination of alcohol and tobacco consumption'' (Ref. 169 at 1184).

2. WARNING: Cigar Smoking Can Cause Lung Cancer and Heart Disease

As discussed in this section, research has shown that cigar smoking can cause lung cancer and heart disease. Yet, national survey data found that while 46.6 percent of cigar smokers believe smoking is a high-risk behavior for developing cancer, they exhibit an ''optimistic bias'' in estimates of their own risk of developing cancer over 20 years—only 8.7 percent consider themselves to be at high risk (Ref. 30 at 737). FDA believes this proposed warning is necessary to help both consumers who may be considering smoking cigars and current smokers better understand and internalize these potential (and critical) health consequences.

a. Lung Cancer

The evidence clearly establishes that cigar smoking can cause lung cancer, but the rate of risk varies (Ref. 28 at 119–120 and Ref. 169 at 1180). Like the dose-response relationship apparent from cigar smoking and mouth and throat cancers, the risk of dying from lung cancer increases as the number of cigars smoked per day and the depth of inhalation increase (Ref. 28 at 119–120). Overall lung cancer risk for cigar smokers also may be similar to the risk for cigarette smokers once the rates are adjusted for differences in inhalation levels and quantity of cigars smoked daily (Ref. 28 at 120). For example, cigar smokers smoking five or more cigars daily with moderate inhalation have lung cancer risks similar to pack-a-day cigarette smokers (Ref. 28 at 119).

Former cigarette smokers who currently smoke cigars are more likely to inhale deeply than cigar smokers who have never smoked cigarettes, increasing their lung cancer risk (Ref. 28 at 155). Cigarette smokers who switch to smoking only cigars have lung cancer risks that are lower than continuing cigarette smokers, but these risks appear to be substantially greater than for

individuals who have quit smoking altogether (Ref. 28 at 120, 155).

Likewise, in an analysis of the data from the Cancer Prevention Study II (a large, long-term study of 1.2 million men and women), researchers found that the risk of lung cancer mortality was approximately 5 times higher for men who were current smokers of only cigars at the start of the 12-year followup study period, compared with men who never smoked (Ref. 170 at 334). This risk was higher for men who smoked 3 or more cigars per day, who reported inhaling cigar smoke, or who had smoked cigars for 25 years or more (id.). Notably, even cigar smokers who reported that they did not inhale were approximately three times more likely to die from lung cancer than those who never smoked (id.).

b. Heart Disease

Researchers have identified a pattern of elevated rates of coronary heart disease and aortic aneurysm among cigar smokers who smoke heavily or inhale deeply. Evidence from the Cancer Prevention Study, Surgeon General's reports, and international studies further substantiate the need to provide clear warnings to consumers of the risk of heart disease associated with smoking cigars.

The Cancer Prevention Study I (CPS I), which studied nearly 1 million men and women in 25 states, found evidence that the rate of coronary heart disease increases with an increase in the numbers of cigars smoked and greater depth of inhalation (Ref. 28 at 144–145). Researchers also identified a significantly elevated risk of developing coronary heart disease in those who smoked five or more cigars per day and exhibited moderate and deep inhalation (id.). Data from CPS I also suggested that cigar smokers are at an increased risk for aortic aneurysm, experiencing a risk rate approaching the rate observed for cigarette smokers (Ref. 28 at 151–152).

Researchers analyzing data from the Cancer Prevention Study II (CPS II) also examined death rates due to coronary heart disease related to cigar smoking. The 1999 analysis looked at approximately 7,000 current cigar smokers, 7,000 former cigar smokers, and 113,000 men who had never regularly smoked tobacco to determine the risk of heart disease for cigar smokers (Ref. 30 at 739). Among men younger than 75 years old, current cigar smokers experienced a coronary heart disease death rate about one-third higher than those who had never smoked (id.).

In the 2010 Surgeon General's report on smoking hazards, titled ''How Tobacco Smoke Causes Disease,'' the Surgeon General found that for older adult cigar smokers, particularly those who smoke more than one cigar per day or inhale the smoke, the risk of heart disease is moderately higher than that for nonsmokers (Ref. 50 at 362). Among the studies relied upon by the Surgeon General was a study published in the *New England Journal of Medicine* involving 17,774 men (1,546 who smoked cigars and 16,228 who did not) ages 30 to 85 at baseline (from 1964 through 1973), who reported that they had never smoked cigarettes and did not currently smoke a pipe (Ref. 33 at 1773). The researchers determined that cigar smoking was associated with a moderate, but significant, increase in the risk of coronary heart disease (Ref. 33 at 1778–1779).

International researchers have reached similar conclusions regarding the impact of cigar smoking on the risk of developing heart disease. For example, in a study of more than 12,000 Danish people aged 30 and over, which looked at the risk of first acute myocardial infarction, researchers found highly significant effects related to the number of cigars used per day and the depth of inhalation of smoke (Ref. 28 at 143). Another Danish study found the highest rates of myocardial infarction for smokers of cheroots (a type of cigar) at the rate of six or more per day, with a relative risk of more than four times the risk for those who had never smoked (Ref. 28 at 142).

3. WARNING: Cigars Are Not a Safe Alternative to Cigarettes

Many consumers wrongly believe that cigars are a safe alternative to cigarettes. As discussed in section V.C, research suggests that youth perceive cigars in a more positive light than cigarettes and believe they are less harmful (Refs. 35 and 116). In addition, some cigar smokers believe that cigars are a safe alternative to cigarettes (Ref. 117). However, the dangers from cigar smoking are similar in nature and magnitude to the adverse health effects associated with cigarette smoking. FDA is proposing this health warning to dispel consumers' widespread, but false, belief that cigars are a safe alternative to cigarettes.

The tobacco smoke from both cigars and cigarettes is carcinogenic to humans, and the toxicants in cigar smoke may be even more dangerous than those in cigarette smoke (Ref. 28). The smoke from both tobacco products is formed largely from the incomplete combustion of tobacco, resulting in cigar smoke being composed of the same toxic and carcinogenic constituents as are in cigarette smoke (Ref. 28 at 3). In addition, the lower porosity of cigar wrappers results in more carbon monoxide per gram of tobacco burned than with cigarettes, and the higher nitrate content of cigar tobacco causes higher concentrations of nitrogen oxides, carcinogenic N-nitrosamines and ammonia (id.). When bioassayed in animals (i.e., tested in animals to determine its potency), the tar of cigar smoke has been found to be more carcinogenic than the tar in cigarette smoke (id.). Data on cigarette smoking and disease risk are more extensive than the data available for cigars; however, given the similarities between the composition of cigar and cigarette smoke, it is reasonable to assume that most of the diseases caused by inhalation of tobacco smoke from cigarettes can be caused by inhalation of tobacco smoke from cigars (Ref. 28 at 113). Therefore, NCI found that ''cigar smoke is as, or more, toxic and carcinogenic than cigarette smoke; and differences in disease risks produced by using cigarettes and cigars relate more to differences in patterns of use, and differences in inhalation, deposition and retention of cigar smoke than to differences in smoke composition'' (Ref. 28 at 3).

The mortality rates for cigar smokers also illustrate that cigars are not a safe alternative to cigarettes. The overall mortality rates for cigar smokers are higher than rates for those who have never smoked, although they may be generally lower than the rates observed for cigarette smokers (Ref. 28 at 112). In addition, the overall mortality rates for those who inhale approach those rates for cigarette smokers (Ref. 28 at 110–112). Further, although data on the risk for those who switch from smoking cigarettes to only cigars are limited, the existing data suggest that the risk of developing lung cancer for persons who switch from cigarettes to cigars is substantially higher than the risk for cigarette smokers who stop smoking all tobacco products (Ref. 28 at 120). While those who smoke only cigars seem to have a lower risk of cardiovascular disease than cigarette smokers, cigarette smokers who switch to cigars often inhale the smoke and thus are less likely to experience the lower risk of cardiovascular disease (Refs. 170 and 28 at 145).

4. WARNING: Tobacco Smoke Increases the Risk of Lung Cancer and Heart Disease, Even in Nonsmokers

In section VII.E.2, we explain the risk of lung cancer and heart disease associated with cigar smoke and the need to warn consumers about these

potential health consequences. Extensive data also exists regarding the dangers of involuntary exposure to tobacco smoke, including cigar smoke. Accordingly, FDA proposes to require a warning on cigar packages and in advertisements to help cigar smokers and potential smokers understand and appreciate that all tobacco smoke increases the risk of lung cancer and heart disease for nonsmokers.

It is well established that secondhand smoke causes premature death and disease in youth and in adults who do not smoke (see, e.g., Ref. 171 at 11 and Ref. 172 at 83, 104). Adult exposure to secondhand smoke has immediate adverse effects on the cardiovascular system and can lead to lung cancer and coronary heart disease (Ref. 171 at 445, 532). Tobacco smoke contains over 4,000 compounds, and there are more than 50 carcinogens in sidestream and mainstream smoke generated from cigars (Ref. 28 at 96 and Ref. 171). Mainstream cigar smoke is the smoke that one draws into his or her mouth from the butt end or mouthpiece of a cigar; whereas sidestream cigar smoke is the smoke emitted from the burning cone of a cigar during the interval between puffs (Ref. 28 at 65). The Surgeon General recently reiterated that cigar smoke contains the same toxic substances as cigarette smoke, with varying concentrations of these constituents found in different types and sizes of cigars (Ref. 171 at 362 and Ref. 28 at 17–18). Even though tobacco users (on average) smoke more cigarettes than cigars, the overall level of toxicants in secondhand smoke from cigars actually is quantitatively higher than it is in the secondhand smoke produced from cigarettes (Ref. 28 at 79). Cigars also produce much higher levels of many indoor pollutants than do cigarettes (Ref. 28 at iii). The smoke from one cigar can take 5 hours to dissipate, exposing household members to a considerable involuntary health risk (Ref. 28 at 163).

a. Lung Cancer and Secondhand Smoke

More than 50 carcinogens have been identified in sidestream and secondhand smoke (Ref. 171). Cigar smoke ''tar'' appears to be at least as carcinogenic as cigarette smoke ''tar'' (id.). Exposure of nonsmokers to secondhand smoke has been shown to cause a significant increase in urinary levels of metabolites of tobacco-specific nitrosamines, a carcinogen that specifically links exposure to secondhand smoke with an increased risk for lung cancer (Ref. 171 at 65). All cigars produce higher levels of carcinogenic tobacco-specific nitrosamines per gram in mainstream cigar smoke than cigarettes produce in mainstream cigarette smoke (Ref. 28 at 75–76). Cigar smoke also produces measurable amounts of lead and cadmium (Ref. 28 at 75–76). Little cigars with filter tips and regular cigars contain higher levels of certain nitrosamines in sidestream smoke than do filtered tip cigarettes (Ref. 28 at 81).

The Surgeon General recently reiterated that there was considerable evidence that certain nitrosamines are major factors in the development of lung cancer (Ref. 171 at 30). According to the Surgeon General, the evidence was sufficient to infer a causal relationship between secondhand smoke exposure and lung cancer among lifetime nonsmokers (Ref. 171 at 434). Individuals living with smokers had a 20 to 30 percent increase in risk of developing lung cancer from secondhand exposure (Ref. 171 at 445). Although the data to demonstrate a similar causal relationship is not available, FDA believes it is reasonable to expect that cigar smoke would produce similar effects, given that data from the NCI cigar monograph showed that some carcinogens determined to cause lung cancer are present at higher levels in cigar smoke than in cigarette smoke and at comparable levels of other carcinogens linked to lung cancer (Ref. 28 at 76–93).

b. Heart Disease and Secondhand Smoke

The proposed health warning statement indicating that tobacco smoke can cause heart disease is thoroughly supported by the evidence reiterated in reports from the Surgeon General (as discussed in section VII.E.2). FDA believes it is reasonable to expect that this finding would produce similar effects with respect to secondhand cigar smoke exposure based on the similar smoke profiles for cigars and cigarettes, the risk of coronary heart disease associated with active cigar smoking, and the low levels of toxicant exposure that can cause coronary heart disease (Ref. 171).

In a 2006 report regarding the health effects of exposure to secondhand smoke, the Surgeon General concluded that exposure of adults to secondhand smoke had immediate adverse effects on the cardiovascular system and caused coronary heart disease (Ref. 171 at 11). Secondhand smoke increased the risk of coronary heart disease nearly as much as active heavy smoking. In fact, the estimated increase in risk of coronary heart disease from exposure to secondhand smoke was 25 to 30 percent above that of unexposed persons (Ref. 171 at 519 and Ref. 83 at 532). Based on these data, the Surgeon General concluded that ''the evidence is sufficient to infer a causal relationship between exposure to secondhand smoke and increased risks of coronary heart disease morbidity and mortality among both men and women'' (Ref. 171 at 15). The IOM agreed, concluding that there is a causal relationship between secondhand smoke exposure and cardiovascular disease, as well as a causal relationship between secondhand smoke exposure and acute myocardial infarction (Ref. 172 at 219).

Even a relatively brief exposure to secondhand tobacco smoke can lead to heart disease, as some studies have demonstrated. The IOM found there is compelling circumstantial evidence that a relatively brief exposure to secondhand smoke can bring about an acute coronary event (Ref. 172 at 220).

Given that the effects of secondhand smoke on coronary heart disease are linked to the combustion of tobacco itself, FDA concludes that exposure to secondhand cigar smoke can cause the same or similarly dangerous effects as exposure to secondhand cigarette smoke.

VIII. Description of the Proposed Rule

A. Proposed Part 1100—Tobacco Products Subject to FDA Authority

The proposed rule would add new part 1100 that would describe the scope of FDA's authority over tobacco products, the requirements that would apply to tobacco products, applicable definitions, and the effective date of the rule.

1. Proposed § 1100.1—Scope

Section 201(rr) of the FD&C Act defines the term ''tobacco product,'' in part, as any product ''made or derived from tobacco'' that is not a ''drug,'' ''device,'' or combination product under the FD&C Act. The Tobacco Control Act permitted FDA to use the ''tobacco product'' authorities in the FD&C Act to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco automatically (''This chapter shall apply to all cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco'' (section 901 of the FD&C Act)). Therefore, the provisions of the FD&C Act applicable to ''tobacco products'' currently apply only to those products.

Section 901 of the FD&C Act provides that the Secretary of HHS, and by delegation FDA, has the authority to ''deem'' any other tobacco products to be subject to the FD&C Act. FDA is exercising this authority and is

proposing, in Option 1 for proposed § 1100.1 of this rule, to deem all products meeting the definition of ''tobacco product,'' as defined in section 201(rr) of the FD&C Act except accessories of a proposed deemed tobacco product, to be subject to the FD&C Act. Because the statutory definition of ''tobacco product'' includes ''any component, part, or accessory'' and FDA has chosen to exclude ''accessory'' from the scope of the deeming regulation at this time, the provisions of the FD&C Act related to ''tobacco product'' also would apply to only the components and parts of the proposed deemed tobacco products.

To date, FDA has issued and finalized one such implementing regulation: ''Exemptions From Substantial Equivalence Requirements'' (76 FR 38961, July 5, 2011). Therefore, if this rule is finalized, the requirements in those regulations would apply to proposed deemed tobacco products. Proposed deemed tobacco products also would be covered by the ''Amendments to General Regulations of the Food and Drug Administration'' rule that became effective on April 14, 2011 (76 FR 12563, March 8, 2011), and the ''Further Amendments to General Regulations of the Food and Drug Administration to Incorporate Tobacco Products'' rule that became effective on April 2, 2012 (77 FR 5171, February 2, 2012) (conforming amendment regulations). Any entity that manufactures, distributes, imports, or sells the proposed deemed products is invited to comment on the substantial equivalence and conforming amendment regulations. In addition, FDA will review existing guidance documents to determine whether they need to be revised in light of this rulemaking.

2. Proposed § 1100.2—Requirements

Option 1 for proposed § 1100.2 would state that cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and all other tobacco products, as defined in section 201(rr) of the FD&C Act except the accessories of such other tobacco products, are subject to the FD&C Act and its implementing regulations. As previously explained, FDA currently has authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco with the regulatory tools provided in the FD&C Act. If this proposed rule is finalized, all other tobacco products that meet the statutory definition, in addition to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, and including the components and parts but not accessories of such other tobacco products, would be subject to the FD&C Act and its implementing regulations. Option 2 would limit the type of cigars that would be subject to the FD&C Act and its implementing regulations. For Option 2, only those cigars the meet the definition of ''covered cigar'' would be subject to the FD&C Act and its implementing regulations. FDA is requesting comments as to whether it is appropriate to deem premium cigars and how non-combustible novel products like e-cigarettes should be regulated. (See sections IV.C and IV.D.)

3. Proposed § 1100.3—Definitions

Option 1 for proposed § 1100.3 would include one definition that would apply to this part.

The definition in proposed § 1100.3 is a restatement of the statutory definition of ''tobacco product'' found in section 201(rr) of the FD&C Act. FDA proposes to restate the definition of ''tobacco product'' in two parts: (1) Tobacco product means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (excluding raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product) and (2) tobacco product does not mean an article that is a drug, device, or combination product as those terms are defined in the FD&C Act. We are repeating the statutory definition of ''tobacco product'' in this proposed rule for easy reference for readers of this regulation.

Option 2 for this section would, in addition to defining ''tobacco product,'' add definitions for ''cigar'' and ''covered cigar.'' A ''cigar'' would be defined as a tobacco product that also meets two requirements: (1) It is not a cigarette and (2) it is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco. This definition was used in the seven consent orders that the FTC entered into with the largest mass marketers of cigars. (See, e.g., In re Swisher International, Inc., Docket No. C–3964.) ''Covered cigar'' would mean any cigar (as defined in § 1100.3), but excluding any cigar that meets the following requirements: (1) It is wrapped in whole tobacco leaf; (2) it contains a 100 percent leaf tobacco binder; (3) it contains primarily long filler tobacco; (4) it is made by combining manually the wrapper, filler, and binder; (5) it does not have a filter, tip or non-tobacco mouthpiece and the cap (or crown) of the cigar is added by hand; (6) it has a retail price (after any discounts or coupons) of no less than $10 per cigar (adjusted, as necessary, every 2 years, effective July 1st, to account for any increases in the price of tobacco products since the last price adjustment); (7) it does not have a characterizing flavor other than tobacco; and (8) it weighs more than 6 pounds per 1000. FDA is proposing this definition to limit the scope of cigars covered under Option 2 by excluding ''premium'' cigars. As discussed earlier, FDA is soliciting comment on how this proposed rule should apply to cigars.

4. Proposed Effective Date

The requirements in the FD&C Act that currently apply to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco became effective: (1) On the date of enactment of the Tobacco Control Act (i.e., June 22, 2009) (referred to in this document as the automatic provisions), (2) on deadlines based on or calculated from the date of enactment of the Tobacco Control Act, or (3) upon issuance of a guidance and/or rulemaking specified by the Tobacco Control Act.

Likewise, FDA is proposing that the effective date of parts 1100 and 1140 be the date of publication of a final rule (if this proposed rule is finalized) plus 30 days. All of the statutory provisions found in the FD&C Act that currently are in effect for cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, or will be in effect as of 30 days after the date of publication of the final rule, would apply to proposed deemed tobacco products as a matter of law on this effective date. Provisions that have not yet become effective as of the date of publication of the final rule, but rather will become effective when FDA issues a regulation or guidance, would not yet be in effect for proposed deemed tobacco products (e.g., regulations implementing section 915(a) of the FD&C Act for testing, reporting, and disclosure of tobacco product constituents, ingredients, and additives, including smoke constituents, by brand and subbrand). These provisions would apply to all tobacco products subject to the FD&C Act (but not to accessories of a tobacco product) only when the regulation or guidance required by the statute is issued.

The final rule publication date plus 30 days was chosen as the proposed effective date to comply with 5 U.S.C. 553(d) (i.e., the Administrative Procedure Act requires that a substantive rule provide a 30-day period before its effective date) and to be consistent with the Tobacco Control Act. Many of the requirements in the FD&C Act became effective on the date that the Tobacco Control Act was

enacted, such as sections 902 (adulterated tobacco products), 903 (misbranded tobacco products), and 904(b) (ability of FDA to request the submission of certain documents from tobacco product manufacturers or importers). See section VIII.A.1 where we discuss the effect of this rule on implementing regulations and guidance documents that FDA has already issued that pertain to ''tobacco products.''

5. Proposed Compliance Dates for Certain Provisions

As described in VIII.A.4, not all of the requirements in the FD&C Act became effective on the date of enactment of the Tobacco Control Act. The effective date of some requirements are based on or calculated from the date of enactment of the Tobacco Control Act, and some requirements become effective only upon issuance of a guidance and/or regulation specified by the Tobacco Control Act. For example, section 904(a)(1) of the FD&C Act requires each tobacco manufacturer to submit an ingredient listing to FDA ''not later than 6 months after the date of enactment'' of the Tobacco Control Act.

To avoid confusion, and to provide time for firms to comply with provisions that require labeling changes or information submissions to the Agency, FDA is proposing compliance timeframes for certain provisions. For consistency and fairness, FDA is generally using the existing dates found in the Tobacco Control Act as a guide for determining the timeframe for compliance with these provisions. Table 1B of this document lists certain provisions that would be applicable to proposed deemed tobacco products and the dates on which FDA proposes to start enforcing compliance with those provisions. FDA is seeking comment on the proposed compliance dates for the provisions listed in table 1B.

TABLE 1B—COMPLIANCE DATES FOR VARIOUS PROVISIONS

FD&C Act citation	Provision	Compliance date
903(a)(2)	A tobacco product shall be deemed misbranded if in package form unless it bears a label containing—. (A) the name and place of business of the tobacco product manufacturer, packer, or distributor; (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; (C) an accurate statement of the percentage of the tobacco used in the product that is domestically grown tobacco and the percentage that is foreign grown tobacco; and (D) the statement required under section 920(a), except that under subparagraph (B) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Secretary.	24 months after the issuance of the final regulation.
903(a)(3)	A tobacco product is misbranded—if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, or designs in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.	Effective date of part 1100 PLUS 1 year.
903(a)(4)	A tobacco product is misbranded—(4) if it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name prominently printed in type as required by the Secretary by regulation.	Effective date of part 1100 PLUS 1 year.
903(a)(8)	A tobacco product is misbranded—(8) unless, in the case of any tobacco product distributed or offered for sale in any State, the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that tobacco product—(A) a true statement of the tobacco product's established name as described in paragraph (4), printed prominently; and (B) a brief statement of—(i) the uses of the tobacco product and relevant warnings, precautions, side effects, and contraindications; and (ii) in the case of specific tobacco products made subject to a finding by the Secretary after notice and opportunity for comment that such action is appropriate to protect the public health, a full description of the components of such tobacco product or the formula showing quantitatively each ingredient of such tobacco product to the extent required in regulations which shall be issued by the Secretary after an opportunity for a hearing.	Effective date of part 1100 PLUS 1 year.
904(a)(1) and 904(c)(1).	(a)(1) REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information: (1) Not later than 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand. (c) TIME FOR SUBMISSION.— (1) IN GENERAL.—At least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the manufacturer of such product shall provide the information required under subsection (a).	Effective date of part 1100 PLUS 6 months (products on the market as of the effective date) or 90 days before delivery for introduction into interstate commerce (products entering the market after the effective date).

TABLE 1B—COMPLIANCE DATES FOR VARIOUS PROVISIONS—Continued

FD&C Act citation	Provision	Compliance date
904(a)(3)	REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information: (3) Beginning 3 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a listing of all constituents, including smoke constituents as applicable, identified by the Secretary as harmful or potentially harmful to health in each tobacco product, and as applicable in the smoke of each tobacco product, by brand and by quantity in each brand and subbrand.	Effective date of part 1100 PLUS 3 years.
904(a)(4)	REQUIREMENT.—Each tobacco product manufacturer or importer, or agents thereof, shall submit to the Secretary the following information: (4) Beginning 6 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, all documents developed after such date of enactment that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.	Effective date of part 1100 PLUS 6 months (current manufacturers) or 90 days prior to delivery for introduction into interstate commerce (new manufacturers).
905(b), (c), (d), and (h).	905(b)—REGISTRATION BY OWNERS AND OPERATORS.—On or before December 31 of each year, every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products shall register with the Secretary the name, places of business, and all such establishments of that person. If enactment of the Family Smoking Prevention and Tobacco Control Act occurs in the second half of the calendar year, the Secretary shall designate a date no later than 6 months into the subsequent calendar year by which registration under this subsection shall occur. 905(c)—REGISTRATION BY NEW OWNERS AND OPERATORS.—Every person upon first engaging in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products in any establishment owned or operated in any State by that person shall immediately register with the Secretary that person's name, place of business, and such establishment. 905(d)—REGISTRATION OF ADDED ESTABLISHMENTS.—Every person required to register under subsection (b) or (c) shall immediately register with the Secretary any additional establishment which that person owns or operates in any State and in which that person begins the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.	If the final rule publishes in the second half of the calendar year, FDA will designate a date for owners and operators to register that is no later than 6 months into the subsequent calendar year. (The registration date will be specified in a draft guidance for registration.). The timeframes for paragraphs (c) and (d) take effect after the date specified for (b) occurs.
905(i)(1)	PRODUCT LIST.—Every person who registers with the Secretary under subsection (b), (c), (d), or (h) shall, at the time of registration under any such subsection, file with the Secretary a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution and which have not been included in any list of tobacco products filed by that person with the Secretary under this paragraph or paragraph (2) before such time of registration. Such list shall be prepared in such form and manner as the Secretary may prescribe and shall be accompanied by—(A) in the case of a tobacco product contained in the applicable list with respect to which a tobacco product standard has been established under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;. (B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and (C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.	Must submit at the time of initial registration; see date specified for 905(b).
907(a)(1)(B)	(B) ADDITIONAL SPECIAL RULE.—Beginning 2 years after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, a tobacco product manufacturer shall not use tobacco, including foreign grown tobacco, that contains a pesticide chemical residue that is at a level greater than is specified by any tolerance applicable under Federal law to domestically grown tobacco.	Effective date of part 1100 PLUS 2 years.
911(b)(2)(A)(i) and (ii).	911(a)—IN GENERAL.—No person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product unless an order issued under subsection (g) is effective with respect to such product.. 911(b)(1)—MODIFIED RISK TOBACCO PRODUCT.—The term 'modified risk tobacco product' means any tobacco product that is sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. (2) SOLD OR DISTRIBUTED.—	Use of "light," "low," and "mild" descriptors: Effective date of part 1100 PLUS 1 year (stop manufacture); Effective date of part 1100 PLUS 13 months (stop distribution).

TABLE 1B—COMPLIANCE DATES FOR VARIOUS PROVISIONS—Continued

FD&C Act citation	Provision	Compliance date
	(A) IN GENERAL.—With respect to a tobacco product, the term 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products' means a tobacco product— * * * (ii) the label, labeling, or advertising of which uses the descriptors light, mild, or low or similar descriptors; or * * * (3) EFFECTIVE DATE.—The provisions of paragraph (2)(A)(ii) shall take effect 12 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act for those products whose label, labeling, or advertising contains the terms described in such paragraph on such date of enactment. The effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with paragraph (2)(A)(ii).	
920(a)(1)	(1) REQUIREMENT.—Beginning 1 year after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the label, packaging, and shipping containers of tobacco products other than cigarettes for introduction or delivery for introduction into interstate commerce in the United States shall bear the statement 'Sale only allowed in the United States'.	24 months after the issuance of the final regulation.

In most circumstances, the compliance dates FDA is proposing for the proposed deemed tobacco products are similar to the timeframe in which cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco manufacturers or importers were required to comply with the corresponding requirement. For example, the labeling requirement in section 920(a)(1) of the FD&C Act required the label, packaging, and shipping containers of tobacco products other than cigarettes for introduction or delivery for introduction into interstate commerce in the United States to bear the statement ''sale only allowed in the United States'' beginning 1 year after the date of enactment of the Tobacco Control Act. In table 1, the proposed compliance date for this provision as applied to proposed deemed tobacco product manufacturers would be 2 years after the effective date of this rule. FDA is soliciting comments on the proposed compliance dates in table 1.

6. Proposed Regulatory Approach for Newly Deemed Tobacco Products

FDA also is soliciting comment on what FDA actions or regulatory approaches, if any, should be taken for proposed deemed tobacco products that are ''new tobacco products'' under section 910(a)(1) of the FD&C Act. A new tobacco product means ''any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007; or any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007'' (section 910(a)(1) of the FD&C Act). In general, a tobacco product manufacturer has three pathways for legally marketing a new tobacco product: (1) The manufacturer obtains an order under section 910(c)(1)(A)(i) (order after review of a premarket application) before the manufacturer introduces a new tobacco product into interstate commerce (section 910 of the FD&C Act); (2) the manufacturer obtains an order finding substantial equivalence under section 910(a)(2)(A) of the FD&C Act (order after review of a section 905(j) report) before the manufacturer introduces a new tobacco product into interstate commerce (section 910 of the FD&C Act); and (3) the manufacturer makes a request under § 1107.1 (21 CFR 1107.1) and obtains an exemption from the requirements related to substantial equivalence.[5] Tobacco products that were commercially marketed (other than for test marketing) in the United States as of February 15, 2007, are not ''new tobacco products'' subject to the premarket requirements, and FDA refers to these products as ''grandfathered.''

Based on initial information FDA has gathered and received from industry, many tobacco products we are proposing to deem that are currently being sold may not be ''grandfathered'' tobacco products because many were not commercially marketed or modified until after February 15, 2007. We understand that this may be particularly true in the case of e-cigarettes and similar novel products. Moreover, new products that come on the market in the future would never be grandfathered tobacco products because they would be coming on the market after February 15, 2007. We do not believe that we have the authority to alter or amend this grandfathering date, which is set by statute. Therefore, FDA believes most proposed deemed tobacco products would be considered new tobacco products and would be required to obtain an order from FDA prior to marketing under one of the three pathways listed in section VIII.A.6. As stated in sections VIII.A.6.c and VIII.A.6.d, FDA is proposing a 24-month compliance policy for manufacturers of proposed deemed products to submit marketing applications. FDA does not intend to initiate enforcement action against products on the market for failing to have an FDA marketing authorization until 24 months following the effective date of the final rule. In addition, as described in section VIII.A.6.c, we intend to continue that compliance policy pending review of marketing applications if those applications are submitted within the 24 months after the final rule's effective

[5] See 21 CFR 1107.1(b) for information on requesting an exemption under section 905(j)(3) of the FD&C Act. Manufacturers who obtain an exemption must then submit a report under section 905(j)(1)(A)(ii) of the FD&C Act.

date. We intend to work with industry to assist them in making submissions. We expect that our proposed approach, as discussed in this section, would help minimize disruption while FDA conducts its pre-market review. Further, we request comment on whether there are ways that we might provide additional flexibility with respect to PMTAs that would still be appropriately protective of the public health.

a. Premarket Tobacco Applications

Before a new tobacco product may be introduced or delivered for introduction into interstate commerce, the manufacturer must obtain an order from FDA authorizing the marketing of the product (section 910(a)(2) of the FD&C Act). Where a new tobacco product is not substantially equivalent to a tobacco product commercially marketed in the United States as of February 15, 2007, or exempt from the requirement to obtain a substantial equivalence determination, the manufacturer must submit a premarket tobacco product application under section 910(b) of the FD&C Act and receive a marketing authorization order under section 910(c)(1)(A)(i) prior to marketing the product. Under section 902(6)(A) of the FD&C Act, a tobacco product is deemed adulterated if it is a new tobacco product and it ''does not have an order in effect under section 910(c)(1)(A)(i)'' as necessary under section 910(a) of the FD&C Act.

b. Substantial Equivalence

Substantial equivalence is an alternate to the primary pathway of submitting a new tobacco product application under section 910(b) of the FD&C Act. To obtain an substantial equivalence order, a manufacturer must submit an SE report under section 905(j)(1) of the FD&C Act and receive a substantial equivalence order under section 910(a)(2).

Section 905(j)(1) of the FD&C Act requires that manufacturers submit SE reports under section 905(j) at least 90 days before introducing or delivering for introduction into interstate commerce for commercial distribution, a tobacco product intended for human use that was not commercially marketed in the United States as of February 15, 2007. However, section 905(j)(2) of the FD&C Act provides that for tobacco products that were first introduced to the market between February 15, 2007, and March 22, 2011, SE reports were due 21 months from the date of enactment of the Tobacco Control Act (March 22, 2011). Products that met the requirements of section 905(j)(2) were permitted to remain on the market pending FDA review of their SE reports (referred to as ''provisional reports'') unless and until FDA issues an order finding them not substantially equivalent (section 910(a)(2)(B) of the FD&C Act). Under section 903(a)(6) of the FD&C Act, a tobacco product is deemed misbranded ''if a notice or other information respecting it was not provided as required by such section or section 905(j).''

c. Compliance Policy for Substantial Equivalence (SE) Reports

FDA is considering a compliance approach for proposed deemed products that is similar to the provisional approach set forth in sections 905(j)(2) and 910(a)(2)(B) of the FD&C Act. FDA is proposing the following compliance policy for submission of SE reports for all proposed deemed products.

If a new tobacco product meets the following. . .	FDA intends to enforce the FD&C Act as follows. . .
Is marketed between February 15, 2007, and [effective date of part 1100 plus 24 months] and the manufacturer submits a 905(j) report for the product by [effective date of part 1100 plus 24 months].	FDA does not intend to initiate enforcement action against the product for failing to have an FDA marketing authorization unless and until FDA issues an order denying your substantial equivalence submission under 910(a)(2). If FDA issues such an order, FDA intends to enforce the premarket authorization requirements with respect to your product.
Is marketed between February 15, 2007, and [effective date of part 1100 plus 24 months] and the manufacturer did not submit a 905(j) report for the product by [effective date of part 1100 plus 24 months] and has not obtained a marketing authorization order under section 910(c)(1)(A)(i).	FDA does not intend to initiate enforcement action against the product for failing to have an FDA marketing authorization until [effective date of part 1100 plus 24 months]. Thereafter, if no PMTA has been filed, FDA intends to enforce the premarket authorization requirements with respect to the product.
Would be marketed on or after [effective date of part 1100 plus 24 months].	FDA intends to enforce the premarket authorization requirements with respect to the product.

Therefore, FDA is proposing a compliance period of 24 months after the effective date of this rule—during which time FDA would not intend to initiate enforcement against the product on the market for failing to have a marketing order from FDA. Under FDA's proposal, FDA would not intend to initiate enforcement action for failure to have a marketing authorization against proposed deemed tobacco products first introduced or delivered for introduction into interstate commerce for commercial distribution after February 15, 2007, and prior to the 905(j) proposed compliance date (i.e., effective date plus 24 months), provided a 905(j) report is submitted no later than the proposed compliance date, and FDA has not issued an order finding the tobacco product to be not substantially equivalent. In these cases, the Agency would not intend to initiate enforcement action against the tobacco product on the market for failure to have a marketing authorization unless and until FDA issues an order that the tobacco product is not substantially equivalent to the predicate tobacco product (section 910(a)(2)(A) of the FD&C Act). FDA would consider taking different or additional actions if it believes particular circumstances warrant them. FDA would also consider revising its compliance policy should the Agency find that doing so is warranted, such as to better protect the public health.

FDA is soliciting data, research, information, and comments on this proposed approach to compliance for new tobacco products, including comments on the following questions:

- What are the benefits and/or disadvantages of a new product compliance period longer than the proposed 24-month period?
- If you disagree with the proposed 24-month new product compliance period, provide an alternative compliance date and supporting information.
- FDA is proposing that this compliance approach should be available to all proposed deemed tobacco products. However, should FDA take into account other factors, such as the type of product or other circumstances? Why or why not? If so, what factors or circumstances would be appropriate? For example, is there a justification for having the

compliance policy instead apply to the following circumstances:
  - When marketing of the new tobacco product is limited to existing adult users of the product?
  - When marketing of the new tobacco product is unlikely to be seen or received by youth?
  - When the new tobacco product bears certain warnings?
- Given the express grandfather date and predicate restriction provided in the FD&C Act that govern the process for legally marketing a tobacco product, what are the implications for proposed deemed tobacco products?
- What is the impact on public health that proposed deemed tobacco products that entered the U.S. market after February 15, 2007, and have no viable predicate have available only the premarket application pathway?
- Provide examples of proposed deemed tobacco products that would likely be able to proceed to market via the SE pathway. Describe the range of predicates that would be available to demonstrate substantial equivalence.
- What other alternative marketing pathways or policy options should FDA consider if, in fact, no predicate is available?
- Are there other legal interpretations of the substantial equivalence grandfather provision that FDA should consider?

d. Compliance Policy for Premarket Tobacco Product Applications

FDA is not certain that manufacturers would in fact be able to use the SE pathway for many proposed deemed tobacco products because they may not be able to identify a viable predicate. Where this is in fact the case, manufacturers of proposed deemed tobacco products would have available only the premarket application pathway (section 910(b) of the FD&C Act). As for 905(j) reports, FDA is considering a compliance approach for premarket tobacco product applications (PMTAs) that is similar to the provisional approach set forth in sections 905(j)(2) and 910(a)(2)(B) of the FD&C Act. FDA is proposing the following compliance policy for submission of all PMTAs for proposed deemed products.

If a new tobacco product meets the following. . .	FDA intends to enforce the FD&C Act as follows. . .
Is marketed between February 15, 2007, and [effective date of part 1100 plus 24 months] and the manufacturer submits a PMTA for the product by [effective date of part 1100 plus 24 months].	FDA does not intend to initiate enforcement action against the product for failing to have an FDA marketing authorization unless and until FDA issues an order denying the PMTA under 910(c). If FDA issues such an order, FDA intends to enforce the premarket authorization requirements with respect to the product.
Is marketed between February 15, 2007, and [effective date of part 1100 plus 24 months] and the manufacturer did not submit a PMTA for the product by [effective date of part 1100 plus 24 months] and has not obtained a marketing authorization order under section 910(a)(2).	FDA does not intend to initiate enforcement action against the product for failing to have an FDA marketing authorization until [effective date of part 1100 plus 24 months]. Thereafter, FDA intends to enforce the premarket authorization requirements with respect to the product.
Would be marketed on or after [effective date of part 1100 plus 24 months].	FDA intends to enforce the premarket authorization requirements with respect to the product.

Therefore, as with products that may be eligible for the SE pathway, FDA is proposing a 24-month compliance period for products that may only be eligible for the PMTA pathway. Under FDA's proposal, FDA would not intend to initiate enforcement action for failure to have a marketing authorization against proposed deemed tobacco products first introduced or delivered for introduction into interstate commerce for commercial distribution after February 15, 2007, and prior to the proposed compliance date (i.e., effective date plus 24 months), provided a PMTA is submitted no later than the proposed compliance date, and FDA has not issued an order denying the PMTA. In these cases, the Agency would not intend to initiate enforcement action against the tobacco product for failure to have a marketing authorization unless and until FDA issues an order denying the PMTA under section 910(c) of the FD&C Act.

FDA is seeking data, research, information, and comments related to the following:

- Should FDA consider a different compliance policy for proposed deemed tobacco products that cannot, as a practical matter, use the SE pathway? If so, what should the compliance policy entail and would it benefit public health? Instead of, or in addition to, such a policy, should FDA consider ways to expedite the review of some or all premarket applications for proposed deemed products?
- If FDA does establish a compliance policy or an expedited review process, should the policy or expedited process apply to all proposed deemed products or only to certain categories of products, such as based on their relative impact on public health? Why or why not? For example, FDA could establish factors based on certain categories of products and their relative impact on public health. FDA could use these factors in guiding its enforcement policy. Examples of factors FDA might take into account include whether the product is ''non-combusted;'' contains no tobacco leaf, but contains nicotine, such as some electronic cigarettes; is nonflavored; or is no or low nicotine.
- What other FDA actions or regulatory approaches, if any, should FDA consider for proposed deemed tobacco products that are ''new tobacco products'' under section 910(a)(1) of the FD&C Act and why?
- Are there unique challenges faced by small manufacturers of proposed deemed tobacco products and how should they be addressed?
- FDA is collecting information as to how it can streamline review of new product applications. FDA expects that, in certain instances, it would be able to determine that a product meets the requirements of section 910 of the FD&C Act using information that might be less burdensome for a manufacturer to gather and submit to the Agency. For example, in some cases, it is possible that an applicant may not need to conduct any new nonclinical or clinical studies, while in other cases, such as where there is little to no understanding of a product's potential impact, several nonclinical and clinical studies may be required for market authorization. Toward that end, FDA is seeking comment on whether manufacturers of certain categories of products (e.g., those that contain fewer or substantially lower levels of toxicants, consistent with the continuum of nicotine-delivering products as discussed in section III) could support their applications, and

allow FDA to make its required findings under section 910 of the FD&C Act, with types of information that would be less burdensome to collect than information needed for other product categories.

- Is there anything else FDA should consider to help expedite the application review for products that have fewer or substantially lower levels of toxicants that are seeking a marketing authorization under section 910 of the FD&C Act?

FDA is considering possible additional approaches to address this issue, including increasing the compliance policy period for SEs or PMTAs for new tobacco products. FDA would also consider revising its compliance policy should the Agency find that doing so is warranted, such as to better protect the public health. In addition, FDA may choose to implement this approach for only certain categories of proposed deemed products based on their impact on public health.

We are considering other options as well to best address this issue in a manner that is appropriate for the protection of the public health. FDA is seeking data, research, information, and comments on the previously referenced possible approaches.

e. Request for Comments Regarding Possibility of Staggered Compliance Dates

Different categories of tobacco products may have the potential for varying levels of harm and negative effects on public health. As a result of the potential for differing effects on public health, FDA is considering whether it might be appropriate to stagger the compliance dates for certain provisions for different categories of products. For example, FDA may opt to provide different compliance dates for certain automatic provisions (e.g., ingredient listing under section 904 of the FD&C Act, registration and listing under section 905, and hazardous and potentially hazardous constituent reporting under section 915) based on the negative public health effects known to be associated with certain products. In such cases, products with fewer known negative impacts might have additional time to comply with such provisions when compared with products with greater negative public health effects. FDA requests comments, including supporting facts, research, and other evidence, regarding such an approach.

f. Request for Comments Regarding Requirements for Small Tobacco Product Manufacturers

As explained in the Initial Regulatory Flexibility Analysis, FDA finds that this rule would have a significant economic impact on a substantial number of small entities. This proposed rule would primarily affect domestic tobacco product manufacturers and importers. A number of small tobacco product manufacturers have expressed concern about their ability to comply with certain requirements found in the FD&C Act, such as registration and product listing, ingredient listing, substantial equivalence, and premarket tobacco product applications. FDA is seeking comments about any unique challenges faced by small manufacturers of proposed deemed tobacco products and how they should be addressed. Specifically, FDA would like comments on the following options that may help lessen the time and resources needed to comply with certain requirements:

- Extending the compliance period to provide more time to gather the required information to be included in a regulatory submission information
  - If extending the compliance period would be beneficial, which provisions should be extended and why? Are there any public health concerns that would outweigh any delay in compliance dates?
  - Are there FD&C Act provisions where an extended compliance period would not lessen the burden on small businesses?
  - If extending the compliance period is appropriate, how much more time should FDA provide and why?
- Staggered compliance dates based on the size of the firm: Instead of extending compliance periods outright, another option is to stagger compliance dates based on the size of the manufacturer. Under this option, compliance with certain provisions would be implemented in timed stages. For example, the reporting deadlines for registration and product listing and ingredient listing could be implemented as follows:

Size of firm	Reporting deadline
Large	Compliance date proposed in the rule.
Medium ..	Compliance date proposed in the rule plus 1 year.
Small	Compliance date proposed in the rule plus 2 years.

  - Which provisions are appropriate to stagger in this manner and why? Which provisions should not be staggered in this manner and why?
  - If FDA were to stagger compliance dates based on the size of the manufacturer, how should FDA define the different sizes of firms?
- Instead of a comprehensive approach, should FDA consider the needs of individual tobacco product firms on a case-by-case basis? Under this scenario, a firm could request additional time to comply with certain requirements as the need arises. A tobacco product manufacturer would need to request additional time well in advance of a submission deadline and provide FDA with supporting documentation demonstrating undue hardship in meeting a particular deadline or requirement.

B. Proposed Changes to Part 1140—Cigarettes, Smokeless Tobacco, and Covered Tobacco Products

1. Proposed § 1140.1—Scope

The proposed rule would make several amendments to part 1140 in order to apply certain existing restrictions and access provisions to additional tobacco products. Currently, part 1140 generally applies to cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco products. Therefore, FDA is proposing to add the phrase ''and covered tobacco products'' to § 1140.1(a) and (b).

2. Proposed § 1140.2—Purpose

Like the proposed changes to § 1140.1, the proposed rule also would add ''and covered tobacco products'' to indicate that the purpose of this part is to establish restrictions on the sale, distribution, and access to covered tobacco products in addition to those already established for cigarettes and smokeless tobacco.

3. Proposed § 1140.3—Definitions

The proposed rule would revise or add several definitions that would apply to part 1140. FDA also proposes to revise the order of the definitions in § 1140.3 so that they appear alphabetically and to eliminate the individual paragraph designations.

Proposed § 1140.3 would define ''cigar'' as a tobacco product that also meets two requirements: (1) It is not a cigarette; and (2) it is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco. This definition was used in the seven consent orders that the FTC entered into with the largest mass marketers of cigars. (See, e.g., In re Swisher

International, Inc., Docket No. C–3964.) As discussed earlier, FDA is soliciting comment on how this proposed rule should apply to cigars and is, therefore, also soliciting comment on how to further define categories of cigars, in particular premium cigars.

In addition, to exclude components and parts of tobacco products that do not contain tobacco or nicotine from the proposed restrictions in part 1140, we propose to define a ''covered tobacco product'' as any tobacco product deemed to be subject to the FD&C Act under § 1100.2, except for components or parts that do not contain tobacco or nicotine. The meaning of ''covered tobacco product'' would depend on whether FDA selects Option 1 or Option 2 for any final rule. For purposes of this part, FDA considers any loose tobacco, including pipe tobacco, and the nicotine in e-cigarette cartridges to be within the definition of ''covered tobacco product.'' FDA proposes to treat covered tobacco products in a manner consistent with FDA's treatment of cigarettes and smokeless tobacco throughout part 1140. See ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents ''(75 FR 13225, March 19, 2010). In current part 1140, FDA imposes restrictions on cigarettes and smokeless tobacco, but not on the components, parts, and accessories of such products. FDA believes that applying the minimum age and identification restrictions to covered tobacco products only (and not to the components and parts that do not contain nicotine or tobacco) would be sufficient to protect the public health, because youth will not be able to use such components and parts and potentially suffer the consequences *without also* obtaining the covered tobacco product. In the event that FDA determines it is appropriate for the protection of the public health to extend the restrictions in part 1140 to components and parts that do *not* contain nicotine or tobacco in the future, the Agency will issue a new rulemaking and provide notice and opportunity to comment on such proceeding. FDA seeks comment on this approach. Further, as stated throughout this document, FDA is not proposing to cover accessories of proposed deemed products within the scope of this deeming regulation and, therefore, accessories would not be subject to the additional restrictions in part 1140.

The proposed rule would add a definition of ''importer,'' which would mean ''any person who imports any tobacco product that is intended for sale or distribution to consumers in the United States.'' This definition is based on the definition in 21 CFR 1141.3 (included with the final rule published in the **Federal Register** of June 22, 2011 (76 FR 36627)).

The proposed rule also would update the following terms: ''distributor,'' ''manufacturer,'' ''package,'' ''point of sale,'' and ''retailer.'' These revised definitions would ensure that the terms apply to tobacco products other than just cigarettes and smokeless tobacco.

The proposed rule would redefine ''retailer'' as ''any person who sells tobacco products to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this part.'' The revised definition would ensure that it applies to tobacco products other than just cigarettes and smokeless tobacco.

Finally, the proposed rule would add a definition for ''tobacco product.'' This definition would reiterate the portions of section 201(rr) of the FD&C Act, subsections (rr)(1) and (rr)(2), which establish the criteria for certain products to meet the definition of ''tobacco product.''

4. Proposed § 1140.10—General Responsibilities of Manufacturers, Distributors, Importers, and Retailers

In this section, for purposes of clarity, FDA proposes to add ''and covered tobacco products'' to the existing language. In addition, the Tobacco Control Act defines ''tobacco product manufacturer'' to include importers (section 900(20) of the FD&C Act), signaling Congress' intent for tobacco product importers to be subject to requirements like those in § 1140.10. Accordingly, FDA is proposing to revise this section to also cover importers.

This section currently sets forth the requirement for manufacturers, distributors, and retailers of cigarettes and smokeless tobacco to comply with the applicable requirements in part 1140. With this proposed change, proposed § 1140.10 also would provide that manufacturers, distributors, importers, and retailers are responsible for ensuring that the covered tobacco products (in addition to cigarettes and smokeless tobacco) that they manufacture, label, advertise, package, distribute, import, sell, or otherwise hold for sale comply with all applicable requirements in part 1140.

5. Proposed § 1140.14—Additional Responsibilities of Retailers

In § 1140.14, FDA proposes to divide the section into responsibilities for retailers of cigarettes and smokeless tobacco products and responsibilities for retailers of covered tobacco products. Proposed new § 1140.14(a)(1) through (a)(5) would cover retailers of cigarettes and smokeless tobacco; proposed § 1140.14(b)(1) through (b)(3) would cover retailers of tobacco products other than cigarettes and smokeless tobacco. Accordingly, the proposed rule would create new § 1140.14(b)(1), which would prohibit retailers from selling covered tobacco products (tobacco products other than cigarettes and smokeless tobacco, which are discussed in proposed new § 1140.14(a)), to any individual younger than 18 years of age. This change also would require retailers of covered tobacco products to verify the purchaser's birth date by reviewing the individual's photographic identification. However, as noted in proposed § 1140.14(a)(2)(ii), a retailer is not required to verify the age of any person who is more than 26 years of age. Proposed § 1140.14(b)(3) would prohibit retailers from using electronic or mechanical devices, including vending machines, to sell covered tobacco products, except in locations where the retailer ensures that no person under the age of 18 is permitted. Because the proposed rule would prohibit retailers from selling covered tobacco products to individuals without verifying that they are at least 18 years of age, FDA believes it would not be logical to allow such individuals to purchase such products from vending machines or other mechanical devices. FDA believes it would not be practical or feasible for retailers to verify identification prior to the purchase of covered tobacco products using mechanical devices in facilities that allow individuals under 18 years of age to enter the premises.

C. Proposed Part 1143—Required Warning Statements

1. Proposed § 1143.1—Definitions

The proposed rule would add part 1143, which would contain provisions necessitating the use of ''required warning statements'' for covered tobacco products, as well as for roll-your-own and cigarette tobacco, for which health warnings are not already required by Federal statutes or regulations. Option 1 for proposed section 1143.1 contains four definitions to aid in the understanding of this part.

First, we propose to define ''covered tobacco product'' for the purposes of the proposed health warning requirements as those products deemed to be subject to the FD&C Act under § 1100.2, other than a component or part that does not contain tobacco or nicotine. As stated in proposed § 1140.3, the meaning of

''covered tobacco product'' would depend on whether FDA selects Option 1 or Option 2 for any final rule. In the event that FDA determines that there is sufficient scientific basis to add additional restrictions to components and parts that do not contain tobacco or nicotine in the future, FDA will issue a new rulemaking and provide notice and opportunity for public comment. Further, as stated throughout this document, FDA is not proposing to cover accessories of proposed deemed products within the scope of this deeming regulation and, therefore, accessories would not be subject to the additional restrictions in part 1143.

Second, we propose to define ''package'' as a ''pack, box, carton, or container of any kind in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.'' This definition is based on the definition of ''package'' in section 3 of FCLAA, 15 U.S.C. 1332.

Third, we propose to define ''required warning statement'' as a ''textual warning statement required to be on packaging and in advertisements for cigarette tobacco, roll-your-own tobacco, cigars, and other covered tobacco products.'' This term refers to the warning in proposed § 1143.3(a)(1) that would be required on packages and in advertisements for cigarette tobacco, roll-your-own tobacco, and covered tobacco products. It also refers to the warnings in proposed § 1143.5(a)(1) that would be randomly displayed on cigar packages and rotated quarterly on cigar advertisements.

Fourth, we propose to add a definition for ''roll-your-own tobacco.'' This definition is identical to the definition of ''roll-your-own tobacco'' in section 900(15) of the FD&C Act.

In addition to these four definitions, Option 2 would also provide definitions for ''cigar'' and ''covered cigar'' and they would have the same meaning as these terms in Option 2 for proposed § 1100.3.

2. Proposed § 1143.3—Required Warning Statement Regarding Addictiveness of Nicotine

Proposed § 1143.3(a) of the proposed rule would require the use of a specific warning statement on packages of covered tobacco products other than cigars, and on packages of roll-your-own and cigarette tobacco, sold, distributed, or imported for sale within the United States. This required warning statement would be: ''WARNING: This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.'' Specifically, proposed § 1143.3(a)(1) would state that this requirement applies to cigarette tobacco, roll-your-own tobacco, and other tobacco products for which health warnings are not otherwise required by Federal law or regulation. This same warning statement would also be included as a required warning for cigars in proposed § 1143.5(a)(1).

''Cigarette tobacco'' is currently defined under § 1140.3(b). In the proposed rule, and in accordance with the FD&C Act, ''roll-your-own tobacco'' would be defined in § 1140.3 as ''any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.'' The proposed rule also would define ''covered tobacco product'' in § 1143.1 as discussed in section VIII.C.1.

In addition, § 1143.3(a)(1) explains that the requirements of this subsection would not apply to tobacco products for which health warnings are already required by law or regulation. Specifically, health warnings for cigarette packages are already required by section 4(a) of FCLAA (15 U.S.C. 1333(a)). In addition, health warnings for smokeless tobacco product packages are required by section 3(a) of CSTHEA (15 U.S.C. 4402(a)).

Proposed § 1143.3(a)(2), like proposed § 1143.5(a)(2), would require that the required warning statement appear directly on the package and be clearly visible underneath any cellophane or other clear wrapping. Thus, any clear outer wrappings on the package would be required to allow the warning statement to be clearly visible and easily read by consumers. Proposed § 1143.3(a)(2)(i) through (a)(2)(v) would give additional explanation as to the size and placement of the required warning statement to ensure that it is easily viewed by consumers and would be identical to the requirements of proposed § 1143.5(a)(2)(i) through (a)(2)(v). For additional information regarding these requirements, see the analysis in section VIII.C.2 regarding proposed § 1143.5(a)(2).

Proposed § 1143.3(a)(3) provides the retailer exception, similar to the one included in proposed § 1143.5(a)(4). Under proposed § 1143.5(a)(4), to obtain the retailer exception for cigar packages, the packaging would have to be supplied by a manufacturer, importer, or distributor who has the required state, local or Alcohol and Tobacco Tax and Trade Bureau (TTB)-issued license or permit, if applicable. In contrast, under proposed § 1143.3(a)(3), for retailers to obtain the retailer exception, the packages would not need to be supplied by a license- or permit-holding manufacturer, importer, or distributor. These requirements for retailers and the retailer exemption in proposed § 1143.3(c) are consistent with the requirements of the FCLAA, 15 U.S.C. 1333 *et seq.,* as modified by section 201(a) of the Tobacco Control Act. FDA is not including the ''license- or permit-holding'' modifier for covered tobacco products other than cigars, because not all of these products are currently under the authority of the TTB. Therefore, manufacturers, importers, and distributors of such products currently do not need to obtain a license or permit to manufacture, import, or distribute them.

Proposed § 1143.3(b) requires the use of the warning statement, ''WARNING: This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.'' on advertisements for all covered tobacco products and products for which health warnings are not otherwise required by Federal law or regulation (i.e., cigarette tobacco and roll-your-own tobacco). For a description of the types of products that this proposed subsection would cover, see the previous discussion regarding proposed § 1143.3(a). This provision would require that manufacturers, packagers, importers, distributors, and retailers of such products include the required warning statement on all advertisements for such products within the United States. (See also section VIII.C.2 for examples of the types of advertisements that would be covered by this regulation.)

Under proposed § 1143.3(b)(2), the required warning statement must be located in the upper portion of the area of the advertisement within the trim area in order to maximize visibility. Proposed 1143.3(b)(2)(i) would require that the warning statement occupy at least 20 percent of the area of the advertisement, which is the same as the statutory requirement for press and poster advertisements for smokeless tobacco products. (See section 3(b)(2)(B) of CSTHEA (15 U.S.C. 4402(b)(2)(B)).) Proposed 1143.3(b)(2)(ii) through (b)(2)(v), which provide specifications for the required warning statements on cigar advertisements, would be the same as proposed § 1143.3(a)(2)(ii) through (a)(2)(v), which provide the specifications for required warnings on cigar packages. Therefore, the description of proposed § 1143.3(a)(2)(ii) through (a)(2)(v) for cigar packages also applies to proposed § 1143.3(b)(2)(ii) through (b)(2)(v) for cigar advertisements.

Proposed § 1143.3(b)(2)(vi) would require that the warning statement be enclosed by a rectangle that is the same color as the text of the required warning

statement. The border of the rectangle would be required to have a width that is between 3 and 4 mm. The border of the rectangle would be required to have a width that is between 3 and 4 mm. This border would allow the warning to be conspicuous among any other text or images in the advertisement, and the border is the standard size that is used in many countries and regions, including in the European Community (see, e.g., 2001/37/EC). Again, FDA would consider the required warning statement to be conspicuous and legible if the statement is printed in one to four lines of text, parallel to each other, and there is ample word and line spacing to allow the statement to be read easily. For additional information regarding those specifications and why FDA selected them, please see section VIII.C.2.

Proposed § 1143.3(b)(3) would apply the limited retailer exception to retailers of covered tobacco products (as well as roll-your-own and cigarette tobacco), which would be identical to the retailer exception for cigar advertisements in proposed § 1143.5(b)(3). For additional information regarding the requirements to meet this exception, see the discussion in section VIII.C.2.

Proposed § 1143.3(c) would provide an exemption to a product manufacturer that otherwise would be required to include the warning statement in proposed § 1143.3(a)(1) on its packages and in its advertisements. To obtain this exemption, the manufacturer would be required to certify to FDA that its product does not contain nicotine and that the company has data to support that assertion; therefore, the product does not warrant the proposed addictiveness warning. For any product that obtains this exemption, the proposed provision would require that the product still bear the message: ''This product is derived from tobacco.'' The parties that package and label such products would share responsibility for ensuring that this alternative statement is included on product packages and in advertisements. FDA believes it is important to alert consumers and retailers as to which items are tobacco products. Even if a tobacco product does not contain nicotine, it can still contain other addictive chemicals (like anabasine or nornicotine, discussed in the preamble) or dangerous toxicants. Therefore, FDA believes consumers should be aware that the product is, in fact, a tobacco product. In addition, this statement would alert consumers as to which products would require identification for purchase and increase retailer awareness of the products for which they must verify the age of consumers. While FDA is not aware of any currently marketed tobacco products that do not contain nicotine, the proposed rule would permit companies to use this alternative statement in the event that such tobacco products are developed in the future. FDA requests comments on this alternative statement.

FDA recognizes that certain tobacco products include constituents, in addition to nicotine, that may cause addiction. For example, tobacco products with nicotine removed or with only trace levels of nicotine may have other addictive constituents. Certain other constituents of smoke may contribute to sensory qualities of addiction, including flavorings and other potentially addictive components such as monoamine oxidase inhibitors (Refs. 173, 174, 175, 176, 177, 178, and 179).

Research also has shown that several constituents found in tobacco or tobacco smoke (e.g., nornicotine, acetaldehyde, and anabasine) have the potential to produce dependence and be addictive (''dependence potential''), as demonstrated by animal research. For example, the chemical nornicotine has the potential to be addictive in humans. Nornicotine causes increased dopamine (DA) levels and/or increased dopaminergic neuronal activity in the midbrain (Refs. 180 and 181). When released in the midbrain (including the nucleus accumbens and striatum), DA is widely thought to be involved in the maintenance of positively reinforced behavior, including feeding and drug taking (Ref. 182). Drugs that cause increased DA in these areas of the brain are thought to have dependence potential (Ref. 183). In addition, nornicotine substitutes for nicotine in drug discrimination testing [6] and maintains self-administration [7] in animals (Ref. 184). Acetaldehyde also likely has dependence potential as indicated by effects on midbrain DA and self-administration studies, along with data using place conditioning methods (Refs.188, 189, and 190).[8] Early data on effect on DA levels suggest that anabasine may also have some dependence potential (Ref. 192). Given that scientific research indicates that nicotine is the primary addictive component, FDA has proposed to include only nicotine in the addictiveness warning. Nevertheless, FDA requests comment as to whether the proposed addictiveness warning also should cover other substances that may cause addiction.

Manufacturers who submit a false certification to FDA would be subject to serious penalties. Knowingly and willfully submitting a false certification would be punishable as a criminal offense under 18 U.S.C. 1001. In addition, a product that did not contain the required warning statement on its packages or in its advertisements (once the regulation is finalized) would be misbranded under section 903(a)(1) of the FD&C Act, as well as other provisions of the Tobacco Control Act and subject the manufacturer to enforcement action, including civil money penalties and product seizure. FDA intends to issue guidance regarding this self-certification process if the regulation is finalized.

3. Proposed § 1143.5—Required Warning Statements for Cigars

Proposed § 1143.5 of the proposed rule would set forth the required warning statements for cigars. The proposed definition of ''cigar'' would be defined in § 1140.3 as ''a tobacco product that (1) is not a cigarette and (2) is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco.'' We are proposing two options (Option 1 and Option 2) for this section. Option 1 would apply these requirements to all cigars. Option 2 would apply these requirements to a subset of cigars (i.e., covered cigars as defined in Option 2 for proposed § 1143.1). As discussed throughout this document, FDA seeks comment on the appropriateness of defining different categories of cigars, the proposed definition of ''covered cigar,'' and whether certain types of cigars should be subject to a different regulatory regime.

Proposed § 1143.5 contains the proposed requirements for packages, advertisements, and marketing. Proposed § 1143.5(a) contains the proposed requirements for cigar packages only. Proposed § 1143.5(a)(1) would make it unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import cigars without one of the proposed warnings on cigar packages. Four of the five warnings that would be required to be randomly displayed on packages would be the

[6] Drug discrimination is effective in evaluating shared central mechanisms of action (Refs. 185, 186, and 187). For example, stimulant drugs such as caffeine, cocaine, and amphetamine, partially or fully substitute for nicotine, and vice versa.

[7] Self-administration procedures allow an animal to perform a behavior to receive a dose of drug (Ref. 179). Drugs that support self-administration in animals are thought to have high dependence potential in humans.

[8] Place conditioning is a paradigm that evaluates the rewarding (''place preference'') or aversive (''place avoidance'') effects of drugs (Ref. 191). Place conditioning with drugs of abuse such as nicotine, cocaine, amphetamine, morphine, and ethanol results in preference.

same as those currently included on certain cigar packages and advertisements as a result of seven consent orders that the FTC entered into in 2000 with the largest mass marketers of cigars. (See, e.g., In re Swisher International, Inc., Docket No. C–3964.) Under Option 1, all cigars would now be subject to these warning requirements, except the package requirements for those sold individually and not in product packages. Option 2 would apply the warning requirements to a subset of cigars (i.e., covered cigars as defined in Option 2 for section 1143.1). The fifth health warning regarding the addictiveness of nicotine is the same warning that would be required for covered tobacco products (as well as cigarette tobacco and roll-your-own tobacco) included in proposed § 1143.3(a)(1).

Proposed § 1143.5(a)(2) would mandate that the required warning statements appear directly on the package and be clearly visible underneath any cellophane or other clear wrapping enclosing the cigar(s). Thus, any outer wrappings on the package would have to allow the required warning statement to be clearly visible and easily read by consumers. Similarly, any other material that is placed on the outside of packages, such as price information or promotional material (e.g., coupons) would not be permitted to be placed over or otherwise obscure the required warning statement. Paragraphs (a)(2)(i) through (a)(2)(v) of proposed § 1143.5 would provide additional explanation as to the size and placement of the required warning statement to ensure that it is easily viewed by consumers. Proposed § 1143.5(a)(2)(i) would require that the warning statement be located in a conspicuous and prominent place on the two principal display panels of the package. For the warning to be ''conspicuous and prominent,'' it must be in a location where it is likely to be read and understood by the ordinary individual under customary conditions of purchase and use. However, FDA would not consider the required warning statement to be ''conspicuous and prominent'' if it: (1) Appears or is affixed on the bottom of the package; (2) is printed or affixed on the tear line; or (3) is printed or affixed in any other location that would cause the warning to be obscured, damaged, or destroyed when the package is open. (See 16 CFR 307.6(a) (FTC regulations implementing CSTHEA labeling requirements, which were rescinded due to FTC's transfer of authority over smokeless warnings to FDA that was required by the Tobacco Control Act; these regulations have served as a guide for some of FDA's regulatory decisions regarding health warnings).)

''Principal display panels'' refers to the two panels of the package that contain the brand name, logo, and/or selling message for the product. The principal display panels (PDPs) are those panels that are most likely to be displayed, presented, shown, or examined under the normal and customary conditions of display for retail sale and use. Where the package contains the brand name, logo, and/or selling message on only one surface of the product package, the second PDP would be the surface opposite the PDP containing the brand name, logo, and/or selling message. This term will vary based on the type of packaging used for the tobacco product.

In addition, proposed § 1143.5(a)(2)(i) would require that the warning statement comprise at least 30 percent of each of the principal display panels. We are proposing a 30 percent size requirement for product packages to be consistent with Congress' size requirements for similar text-only warnings for smokeless tobacco under CSTHEA (15 U.S.C. 4402(a)(2)(A)), rather than the 50 percent requirements that Congress chose for graphic warnings on cigarette packages.

Proposed § 1143.5(a)(2)(ii) would require that the warning statement appear in the maximum font size that would fit into the warning area. This would ensure that the warning is large enough to be prominent and clearly visible to consumers. FDA would work with companies to ensure that the warnings are being printed on the proper display panels for a particular product.

Proposed § 1143.5(a)(2)(iii) would require that the warning statement be printed in a conspicuous and legible Helvetica bold or Arial bold type, which are included in common printing software. This provision would provide persons printing the required warning statements on packages with the choice of printing the required warning statement in black text on a white background, or white text on a black background, as long as the statement is printed in a manner that contrasts by typography, layout, or color with all other printed material on the package. This proposed requirement is consistent with the requirement for smokeless tobacco product packages included in section 3(a)(2)(B) of CSTHEA (15 U.S.C. 4402(a)(2)(B)), and the same as the requirement for cigarette packages under section 4(a)(2) of FCLAA (15 U.S.C. 1333(a)(2)). FDA would consider the required warning statement to be conspicuous and legible if the statement is printed in one to four lines of text, parallel to each other, and there is ample word and line spacing to allow the statement to be read easily.

Proposed § 1143.5(a)(2)(iv) would require that the warning statements be capitalized and punctuated as indicated in proposed § 1143.5(a)(1). No person would be permitted to edit the capitalization, punctuation, or text of the five required warning statements listed in proposed § 1143.5(a)(1).

Proposed § 1143.5(a)(2)(v) would require that the warning statement be centered in the warning area. This requirement would help ensure that the textual statement is conspicuous and legible. This paragraph also would require that the text of the statement and any other information on the PDP have the same orientation. Requiring all text on the PDP of a package to be oriented in the same direction would help ensure that the warnings are noticed and read by consumers and, therefore, would be appropriate for the protection of the public health.

Proposed § 1143.5(a)(3) proposes a different requirement for cigars sold individually and not in a product package or outer covering.[9] FDA is aware that premium cigars, as well as certain other cigars, are frequently sold to consumers individually and not in product packaging or an outer covering. Requiring a health warning for cigars that are not sold to consumers in a product packaging, therefore, is impractical. Thus, in lieu of such a requirement, proposed § 1143.5(a)(3) would provide that a person who sells or distributes cigars individually and without an outer package, would not be required to comply with the package requirements in proposed § 1143.5(a)(1) and (a)(2), but instead would be required to post the five required warning statements for cigars (as written in proposed § 1143.5(a)(1)) on a sign which would be posted at the point-of-sale at each register of any retail establishment that sells individual cigars that do not contain any product packaging. Retail establishments that sell such products would be required to prepare these simple black and white signs in accordance with the

[9] In general, pursuant to the Internal Revenue Code at 26 U.S.C. 5751, a tobacco product cannot be sold at retail unless it is in the package in which the product is removed, upon payment of Federal excise tax, from the factory or from customs custody. Section 5751(a)(3) and TTB regulations at 27 CFR 46.166(a) state that tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer.

specifications in proposed § 1143.5(a)(3). Retailers may wish to place the sign in a sign holder to ensure that the warnings listed on the sign would be appropriately visible. FDA believes this requirement will ensure that premium cigar purchasers, as well as purchasers of other individual cigars, receive the critical health warnings while allowing persons selling or distributing such cigars to maintain existing business practices. In addition, any person that manufactures cigars also must continue to comply with all other packaging and labeling requirements under the Tobacco Control Act.

FDA is specifically requesting comments on whether the special rule in proposed § 1143.5(a)(3) for cigars sold individually would be effective in helping consumers better appreciate and understand the relevant health risks or whether there are more effective means for doing so. For example, would it be feasible for machine-made cigars that are sold individually to bear the warning on the cigars themselves or in some other way, and would that be a more effective means of conveying the warning? In addition, the Agency also seeks comments on whether there should be different requirements for certain types of cigars and whether these proposed warning requirements are contrary to requirements for any cigars covered by the FTC consent decrees. It is not FDA's intent to allow any cigar that currently bears a warning pursuant to the FTC consent decrees to no longer be required to do so.

As stated throughout this document, Option 2 for proposed § 1143.5 would apply these requirements to a subset of cigars (defined as covered cigars). Therefore, under this option, this special rule for proposed § 1143.5(a)(3) would apply to only those *covered* cigars that are sold individually and not in a product package. We note that those cigars not meeting the definition of ''covered cigars'' would not be required to provide any warning statements on packages and in advertisements. FDA requests comment about this special rule.

Like the warning statements required in proposed § 1143.5(a)(1) and (a)(2), the sign required to be posted at any point of sale where consumers purchase cigars sold without a product package would have to be clear, legible, and conspicuous. Therefore, the warning statements included on the sign must be large enough for consumers to easily read it. The sign must be posted on or within 3 inches of each cash register where payment may be made. Therefore, certain retailers would be required to post multiple signs throughout their establishments. As stated in proposed § 1143.5(a)(3)(i), the warning statements would have to be printed in black Helvetica bold or Arial bold type against a solid white background in at least 17-point type to ensure maximum visibility. This 17-point type size is consistent with the standard that Congress required under section 3(a)(2)(B) of CSTHEA (15 U.S.C. 4402(a)(2)(B)), as amended by section 204 of the Tobacco Control Act. The five individual warning statements must be appropriately spaced on the 8.5 x 11 inch sign so that each individual warning is conspicuous and legible. Also, as required in proposed § 1143.5(a)(3)(i), and like section 3(a)(2)(B) of CSTHEA (15 U.S.C. 4402(a)(2)(B)) for smokeless products, the warning would be printed so that it contrasts by typography, layout, or color with all other printed material. Further, as provided in the proposed required warning statements for product packages, no person would be permitted to edit the capitalization, punctuation, or text of the five required warning statements listed in proposed § 1143.5(a)(1). The requirements in this paragraph would operate together to ensure that the required warning statements included at the point-of sale for cigars sold without a product package could be easily read and understood. If a retailer offers for sale both cigars sold without a product package and cigars sold with product packages, the retailer would be required to post a warning sign in accordance with this paragraph.

Proposed § 1143.5(a)(4) would provide that a cigar retailer would not be in violation of the regulations if cigar packages displayed or sold by the retailer do not comply with all the requirements set forth in the proposed rule, as long as the packages contain a health warning; are supplied by a manufacturer, importer, or distributor who has the required state, local, or TTB-issued license or permit (if applicable); and are not altered by the retailer in a way that materially affects the display of the required warning statements on the packages. For example, if a retailer were to tear the warning in any way or place a sticker or other material over the warning, this likely would affect the display of the warning statements and this retailer exemption would not apply. However, if a retailer were to crop the paper containing the warning statement, but the warning statement has been unaffected and the size of the warning remains the same (and the other requirements for this exemption were met), then the retailer exemption would apply. Thus, cigar manufacturers, distributors, and importers would have primary responsibility for ensuring that the warnings on cigar packages comply with the requirements of proposed § 1143.5, but retailers would have some responsibility as well. Specifically, retailers would be responsible for ensuring that all cigar packages they display or sell contain a warning regarding the health risks associated with smoking cigars. In addition, retailers could not alter the warning statement in a way that is material to the requirements of proposed § 1143.5, including by obscuring the warning (e.g., by placing a sticker or other item on top of it), by shrinking or severing the warning (in whole or in part), or by otherwise changing it in a material way. However, retailers would not be responsible for verifying that the warnings on packages they display or sell contain the precise wording, capitalization, and punctuation in the required warning statements listed in proposed § 1143.5(a)(1) or that they comply with other specifications required in this proposed subsection. This exception for cigar retailers is the same as the exception for cigarette retailers in section 4(a)(4) of FCLAA (15 U.S.C. 1333(a)(4)), implemented by § 1141.1(c) of FDA's regulations, as well as section 3(a)(5) of CSTHEA (15 U.S.C. 4402(a)(5)) for retailers of smokeless products.

Proposed § 1143.5(b) would explain the requirements for placement of health warnings on cigar advertisements. Specifically, proposed § 1143.5(b)(1) would require that manufacturers, packagers, importers, distributors, and retailers include a required warning statement in all cigar advertisements within the United States, similar to the existing FTC consent orders with which the major cigar manufacturers currently comply. Thus, this proposed rule adopts many of the parameters of the industry/FTC consent orders and current practice and proposes that all advertisements, regardless of form—which could include materials such as magazine and newspaper ads, pamphlets, leaflets, brochures, coupons, catalogues, retail or point-of-sale displays (including functional items such as clocks or change mats), posters, billboards, direct mailers, and Internet advertising (e.g., Web pages, banner ads, etc.)—would have to contain required warning statements.

Proposed § 1143.5(b)(2) would require that the required warning statement be located in the upper portion of the area of the advertisement within the trim

area, in order to maximize visibility. Proposed § 1143.5(b)(2)(i) through (b)(2)(vi) would provide the specifications for such advertisements, which would be identical to the specifications in proposed § 1143.3(b)(2)(i) through 1143.3(b)(2)(vi).

Proposed § 1143.5(b)(3), like proposed § 1143.5(a)(4), would provide that a retailer would not be considered to be in violation of this provision if it posts an advertisement that does not comply with all of the proposed requirements, as long as the advertisement was not created by or on behalf of the cigar retailer and the retailer is not otherwise responsible for inclusion of the required warning statements in the advertisement. This section is akin to the requirement in section 4(c)(4) of FCLAA (15 U.S.C. 1333(4)(c)(4)) and section 3(b)(3)(D) of CSTHEA (15 U.S.C. 4402(b)(3)(D)), which includes the same type of exception for retailers displaying cigarette and smokeless advertisements, respectively. Note that any manufacturer, packager, distributor, importer, or retailer who is responsible for the creation of a cigar advertisement would be responsible for complying with this proposed provision. Proposed § 1143.5(b)(3) also specifies that this provision would not relieve a retailer of liability if it publicly displays an advertisement that fails to contain a health warning or if it materially affects the display of the required warning statement. Therefore, except when responsible for the creation of an advertisement or otherwise responsible for the inclusion of the warning statement, a retailer would not be responsible for ensuring that its cigar advertisements comply with the specific requirements of proposed § 1143.5(b)(3). However, retailers would be required to ensure that their cigar advertisements contain a warning of smoking's risks. They would also be responsible for complying with other requirements applicable to cigar retailers, including those in 21 CFR part 1140.

Marketing requirements for cigars are included in proposed § 1143.5(c). Specifically, proposed § 1143.5(c)(1) states that the required warning statements for cigar packages would be required to be randomly displayed in each 12-month period, in as equal a number of times as possible on each brand of cigar. FTC previously defined ''equal number of times as possible'' as permitting deviations of 4 percent or less in a 12-month period and the major cigar manufacturers agreed and currently comply with this standard, and FDA proposes to continue to adhere to FTC's definition. For packages, the required warning statements in proposed § 1143.5(a)(1) also would be required to be randomly distributed in all areas of the United States in which the product is marketed. We note that FDA is proposing to allow manufacturers to continue to introduce into domestic commerce existing inventory that may not contain the health warnings required under a final rule for an additional 30 days after the effective date of any final rule.

This proposed random display and distribution of required warning statements for cigar packages would be in accordance with a warning plan submitted by the cigar manufacturer, importer, distributor, or retailer to, and approved by, FDA. The proposed requirements for random display and distribution, as well as the submission of a warning plan, would be similar to those for cigarettes and smokeless tobacco products, as mandated by section 4(c)(1) of FCLAA (15 U.S.C. 1333(c)(1)) and section 3(a)(3)(A) of CSTHEA (15 U.S.C. 4402(a)(3)(A)), respectively. For cigars sold individually and without product packaging, there would be no requirement to rotate and/or randomly distribute warnings, because all five warnings would be displayed at the point-of-purchase.

Proposed § 1143.5(c)(2) also would require that the required warning statements be rotated quarterly in alternating sequence in each advertisement for each brand of cigar, regardless of whether the cigar is sold in product packaging. This proposed rotation of warning statements in cigar advertisements also would be in accordance with an FDA-approved warning plan.

4. Proposed § 1143.7—Language Requirements for Required Warning Statements

Consistent with section 4(b) of FCLAA (15 U.S.C. 1333(b)) and section 3(b) of CSTHEA (15 U.S.C. 4402(b)), proposed § 1143.7 would require that the warning statement appear in the English language, with two exceptions. First, under proposed § 1143.7(a), if an advertisement appears in a non-English language publication, the required warning statement would need to appear in the predominant language of the publication. The predominant language is the primary language used in the nonsponsored content in the publication. For example, in the case of a newspaper where the nonsponsored content (e.g., news stories, articles of opinion, and features) is in a foreign language but the sponsored content (e.g., advertising) is wholly or partially in English, the predominant language would be the foreign language used in the nonsponsored content, and the required warning statement would have to appear in that foreign language. Because such non-English language publications in the United States are targeted towards consumers who speak the predominant language of the publication, this would help ensure that the target audience of publication is able to read and understand the required warning statement in the advertisement.

Second, under proposed § 1143.7(b), if an advertisement is in an English language publication but is presented in a language other than English, the required warning statement would need to be presented in the same foreign language principally used in the advertisement. English language publications in the United States are generally targeted towards the consumer population as a whole or towards consumers with a particular interest in the subject matter of the publication rather than towards consumers who speak a particular language; however, foreign language advertisements in English-language publications are targeted towards consumers who speak the foreign language used in the advertisement. Therefore, requiring foreign language advertisements in English-language publications to present the required warning statement in the same language that is used elsewhere in the advertisement will help ensure that the target audience of the advertisement is able to read and understand both the promotional content and the important warning information. These two proposed exceptions are the same as the exceptions in § 1141.10(b)(2) and section 4(b)(2) of FCLAA (15 U.S.C. 1333(b)(2)) for the textual portion of the required warnings in cigarette advertisements, as well as section 3(b)(G) of CSTHEA (15 U.S.C. 4402(3)(b)(G)) for the required warning statements in smokeless tobacco advertisements.

5. Proposed § 1143.9—Irremovable or Permanent Required Warning Statements

Proposed § 1143.9 would require that the required warning statement be indelibly printed on or permanently affixed to packages and advertisements. Removable or impermanent warning displays on packages and in advertisements could become separated from the package or advertisement and thus would not meet the requirement that they be conspicuous on the package or advertisement. Removable warnings would run counter to FDA's purpose of effectively conveying risk information to

consumers. For example, if the required warning statement were printed or stickered on a clear outer wrapper, and this wrapper was meant to be removed for access to the package (or the tobacco products within the package), the consumer could access the tobacco product package numerous times without viewing the warning and receiving the impact of the critical health message. This same requirement is contained in § 1141.10(c) regarding health warnings on cigarette packages and in advertisements.

6. Proposed § 1143.11—Does Not Apply to Foreign Distribution

Proposed § 1143.11 would limit the applicability of the proposed requirements by clarifying that these requirements would not apply to manufacturers or distributors of tobacco products that do not manufacture, package, or import the products for sale or distribution within the United States.

7. Proposed § 1143.13—Effective Date

This proposed section would provide that part 1143 would take effect 24 months after the date that the final rule publishes in the **Federal Register**. During this time, parties should take whatever steps they need to plan and implement business operations that will comply with the final rule. As of the effective date, no manufacturer, packager, importer, distributor, or retailer would be permitted to advertise or cause to be advertised within the United States any tobacco product subject to part 1143 unless the advertising complies with the final regulation. Also, product packages which do not comply with the requirements of the final rule must not be manufactured for sale or distribution in the United States as of the effective date.

Further, a product that is manufactured prior to the effective date of the final rule that does not have the required warning statements on its package may not be introduced into commerce in the United States after 30 days following the effective date. Therefore, manufacturers could continue to introduce into domestic commerce existing inventory that may not contain the warning statements required under the final rule for an additional 30 days after the effective date of any final rule. This is consistent with the approach taken in FCLAA (15 U.S.C. 1333(4)(b)), and CSTHEA (15 U.S.C. 4402(3)(b)). After the 30-day period, manufacturers would not be permitted to introduce into domestic commerce any product packages that do not contain the health warning statements required under the final rule, irrespective of the date of manufacture. While this limitation would apply to manufacturers only, we note that keeping products without the new warnings on the market for an extended period of time is not in the interest of public health.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the OMB under the PRA (44 U.S.C. 3501–3520). A description of these provisions is given in the *Description* section with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Deeming Tobacco Products To Be Subject to the Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products

Description: On June 22, 2009, the President signed the Tobacco Control Act into law. In this proposed rule, the Agency is proposing to extend FDA's ''tobacco product'' authorities in the FD&C Act to all other categories of products meeting the statutory definition of ''tobacco product'' in section 201(rr) of the FD&C Act, excluding accessories of proposed deemed tobacco products. (Two options are presented in the proposed rule related to what constitutes a covered tobacco product.) The proposed rule also would prohibit the sale of covered tobacco products to individuals under the age of 18 and prohibit the sale of covered tobacco products using the assistance of any retail-based electronic or mechanical device (such as a vending machine) except in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time. This prohibition on sales from electronic or mechanical devices is not intended to impact the sale of any tobacco product via the Internet. Lastly, the proposed rule would require specified health warnings for covered tobacco products (as well as cigarette tobacco and roll-your-own tobacco) on tobacco product packages and advertisements.

The information collection provisions for which we are seeking comment in this proposed rule have either: (1) Existing burdens associated with tobacco products currently subject to the FD&C Act (i.e., cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco) with approved OMB control numbers; (2) burdens associated with tobacco products currently subject to the FD&C Act, but have not yet been approved by OMB; or (3) a new burden that would apply only to proposed deemed covered tobacco products. The following burden tables for which we are seeking comment are organized according to these three categories.

A. Existing Burdens Associated With Tobacco Products Currently Subject to the FD&C Act (i.e., Cigarettes, Cigarette Tobacco, Roll-Your-Own Tobacco, and Smokeless Tobacco) With Approved OMB Control Numbers

The burden estimates found in this section involve existing collections that have already been approved by OMB and cover tobacco products that are already subject to the FD&C Act (i.e., cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco). FDA is making them available for public comment because the collections have been revised to cover proposed deemed tobacco products. In developing these new burden estimates for proposed deemed tobacco products, FDA based the new estimates on the existing collections already approved by OMB that currently cover cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. Burden estimates are based on Option 1.

1. Tobacco Product Establishment Registration and Submission of Certain Health Information (OMB Control Number 0910–0650)

Description of Respondents: The respondents to this collection of information are manufacturers, importers, or agents of new and existing tobacco product establishments regulated by FDA who are required to register under sections 904 and 905 of

the FD&C Act. They are persons engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products who will be registering their product establishments and must file with FDA a list of all tobacco products being manufactured, prepared, compounded, or processed by that person for commercial distribution at the time of registration. They also must submit a listing of all ingredients whenever additives or the quantities of additives are changed.

Section 101 of the Tobacco Control Act amended the FD&C Act by adding sections 905 and 904. Section 905(b) of the FD&C Act requires that every person who owns or operates any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products register with FDA the name, places of business, and all establishments owned or operated by that person. Section 905(i)(1) of the FD&C Act requires that all registrants must, at the time of registration, file with FDA a list of all tobacco products which are being manufactured, prepared, compounded, or processed by that person for commercial distribution, along with certain accompanying consumer information, such as all labeling and a representative sampling of advertisements.

Section 904(a)(1) of the FD&C Act requires each tobacco product manufacturer or importer, or agent thereof, to submit a listing of all ingredients, including tobacco, substances, compounds, and additives that are added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand. Section 904(c) of the FD&C Act also requires submission of information whenever additives, or the quantities of additives, are changed.

FDA issued guidance documents on both (1) ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments'' (74 FR 58298, November 12, 2009) and (2) ''Listing of Ingredients in Tobacco Products'' (74 FR 62795, December 1, 2009) to assist persons making these submissions to FDA under the FD&C Act. Although electronic submission of registration and product listing information and ingredient listing information are not required, FDA is strongly encouraging electronic submission to facilitate efficiency and timeliness of data management and collection. To that end, FDA designed the eSubmitter application to streamline the data entry process for registration and product listing and for ingredient listing. This tool allows for importation of large quantities of structured data, attachments of files (e.g., in portable document format (PDFs) and certain media files), and automatic acknowledgement of FDA's receipt of submissions. FDA also developed paper forms (Form FDA 3742—Registration and Listing for Owners and Operators of Domestic Tobacco Product Establishments and Form FDA 3743—Listing of Ingredients in Tobacco Products) as alternative submission tools. Both the eSubmitter application and the paper forms can be accessed at *http://www.fda.gov/tobacco*.

FDA estimates the additional annual burden for the information collection as a result of this proposed rule as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
Tobacco Product Establishment Registration (electronic and paper submission)					
Cigar Manufacturers (Including Large and Small)	121	1.0	121	3	363
Pipe Tobacco Manufacturers	73	1.0	73	3	219
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers.	140	1.0	140	3	420
Importers of Cigars (222) and Pipe Tobacco (48) Who Are Considered Manufacturers [3].	270	1.0	270	3	810
Total Tobacco Product Establishment Registration.					1,812
Tobacco Product Listing (electronic and paper submission)					
Cigar Manufacturers (Including Large, Small, and Importers).	343	32.6	11,169	0.75 (45 minutes)	8,377
Pipe Tobacco Manufacturers	73	12.3	901	0.75 (45 minutes)	676
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers.	188	8.9	1,675	0.75 (45 minutes)	119
Total Hours Tobacco Product Listing					10,309
Obtaining a Dun and Bradstreet (DUNS) Number					
Cigar Manufacturers (Including Large and Small)	121	1.0	121	0.5 (30 minutes)	61
Pipe Tobacco Manufacturers	73	1.0	73	0.5 (30 minutes)	37
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers.	140	1.0	140	0.5 (30 minutes)	70
Importers of Cigars (222) and Pipe Tobacco (48) Who Are Considered Manufacturers.	270	1.0	270	0.5 (30 minutes)	135
Total Hours Obtaining DUNS Number					303
Total Hours Registration, Product Listing, and DUNS Number.					12,424

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
Tobacco Product Ingredient Listing (electronic and paper submission)					
Cigar Manufacturers (Including Large, Small, and Importers).	343	32.6	11,169	3	33,507
Pipe Tobacco Manufacturers	73	12.3	901	3	2,703
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers.	188	8.9	1,675	3	5,025
Total Hours Tobacco Product Ingredient Listing.					41,235
Total Burden Tobacco Product Establishment Registration and Submission of Certain Health Information.					53,659

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This number is estimated to be the total annual responses divided by the number of respondents, rounded to the nearest tenth.
[3] Under 21 U.S.C. 387(20), a ''tobacco product manufacturer'' includes any person who ''imports a finished tobacco product for sale or distribution in the United States.''

Based on aggregate information for 2012 obtained from TTB, FDA estimates that 194 domestic manufacturers of cigars and pipe tobacco and 270 importers of cigars and pipe tobacco would be required to register under section 905 of the FD&C Act. Based on FDA's own research, FDA estimates another 140 manufacturers of other tobacco products (non-cigar and non-pipe) would be subject to registration requirements. FDA estimates that the submission of registration information required by section 905 of the FD&C Act will take 3 hours per establishment, with a total of 604 establishments that would be required to register under this proposed rule, for a total of 1,812 hours (604 × 3).

The estimate for the number of product listing submissions for cigars is derived by using Perelman's Pocket Cyclopedia of Cigars (Ref. 193). FDA used a count of products offered on a single Web site with a broad product offering, *http://www.pipesandcigars.com/*, to derive the product listing count for pipe tobacco. FDA derives the product listing estimate for other proposed deemed tobacco products (excluding cigars and pipe tobacco) using an assumption of 15 percent of the number of machine-made cigar products and Universal Product Codes (see also Ref. 192, table C4). FDA estimates that the submission of product listing information required by section 905 of the FD&C Act will take 45 minutes per submission for 13,745 submissions for a total of 10,309 hours.

FDA estimates that obtaining a DUNS number will take 30 minutes. FDA assumes that all the establishment facilities that would be required to register under section 905 of the FD&C Act would obtain a DUNS number, with a total of 604 establishments that would need to obtain this number. The total burden to obtain a DUNS number is 303 hours.

FDA estimates that the submission of ingredient listing information as required by section 904 of the FD&C Act will take 3 hours per tobacco product based on the estimates found in the existing collection. The Agency estimates that approximately 13,745 ingredient listings will be submitted based on the methodology used for estimating the number of product listing submissions described in this section. The total ingredient listing reporting is 41,235 hours (13,745 × 3).

FDA is soliciting comments on these estimates and the methodology for estimating the respondent numbers.

2. Tobacco Health Document Submission (OMB Control Number 0910–0654)

Description of Respondents: Respondents to this collection of information are tobacco product manufacturers, importers, or agents who will submit all documents developed after June 22, 2009, that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products to FDA.

Section 904(a)(4) of the FD&C Act requires each tobacco product manufacturer or importer, or agent thereof, to submit all documents developed after June 22, 2009, that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives (herein referred to as ''tobacco health documents''). Information submissions required under section 904(a)(4) were due to FDA beginning December 22, 2009, for tobacco products currently subject to the FD&C Act.

FDA is collecting the information submitted under section 904(a)(4) of the FD&C Act through an electronic portal and through a paper form (Form FDA 3743) for those individuals who choose not to use the electronic portal.

FDA estimates the additional annual burden for the information collection as a result of this proposed rule as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Cigar Manufacturers (Including Large and Small)	2	4	8	50	400
Pipe Tobacco Manufacturers	1	4	4	50	200

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	1	4	4	50	200
Importers of Cigars and Pipe Tobacco Who Are Considered Manufacturers	1	4	4	50	200
Total Hours Health Document Submission					1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that a tobacco health document submission for cigars, pipe tobacco, other tobacco, and importers of cigars and pipe tobacco required by section 904(a)(4) of the FD&C Act, will take approximately 50 hours per submission based on the existing collection that applies to tobacco products currently subject to the FD&C Act and FDA experience. To derive the number of respondents for this provision, FDA assumes that very few of the respondents subject to registration requirements would have health documents to submit. Therefore, the Agency estimates that approximately five submissions (two for cigar manufacturers, one for pipe tobacco manufacturers, one for other tobacco product manufacturers, and one for importers of cigars and pipe tobacco who are considered manufacturers) will be submitted on an annual basis. FDA estimates the total number of hours is 1,000 hours (5 submissions multiplied by 4 times per year multiplied by 50 average burden hours.)

FDA is soliciting comments on these estimates and the methodology for estimating the respondent numbers.

3. Exemptions From Substantial Equivalence Requirements (OMB Control Number 0910–0684)

Description of Respondents: Respondents to this collection of information are manufacturers of proposed deemed tobacco products who are requesting an exemption from the substantial equivalence requirements of the FD&C Act.

In a final rule that published on July 5, 2011 (76 FR 38961), FDA established a pathway for manufacturers to request exemptions from the substantial equivalence requirements of the Tobacco Control Act (SE exemptions final rule). The SE exemptions final rule implements section 905(j)(3) of the FD&C Act, under which FDA may exempt tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive, if FDA determines that: (1) The modification would be a minor modification of a tobacco product that can be sold under the FD&C Act, (2) a report is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for protection of the public health, and (3) an exemption is otherwise appropriate.

The exemption request may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that manufacturer's product and the request (and supporting information) must be submitted in an electronic format that FDA can process, review, and archive. In addition, the request and all supporting information must be legible and in (or translated into) the English language.

An exemption request must be submitted with supporting documentation and contain:

- The manufacturer's address and contact information;
- identification of the tobacco product(s);
- a detailed explanation of the purpose for the modification;
- a detailed description of the modification; a detailed explanation of why the modification is a minor modification of a tobacco product that can be sold under the FD&C Act;
- a detailed explanation of why a report under section 905(j)(1)(A)(i) intended to demonstrate substantial equivalence is not necessary to ensure that permitting the tobacco product to be marketed would be appropriate for the protection of the public health;
- a certification summarizing the supporting evidence and providing the rationale for why the modification does not increase the tobacco product's appeal to or use by youth, toxicity, addictiveness, or abuse liability;
- other information justifying an exemption; and
- an environmental assessment under part 25 (21 CFR part 25) prepared in accordance with § 25.40.

The exemption request must contain a certification by a responsible official summarizing the supporting evidence and providing the rationale for the official's determination that the modification will not increase the product's toxicity, addictiveness, or appeal to/use by youth and include other information justifying an exemption. This information will enable FDA to determine whether the exemption request would be appropriate for the protection of the public health. There is also a procedural mechanism for rescinding an exemption where necessary to protect the public health. In general, FDA would rescind an exemption only after providing the manufacturer notice of the proposed rescission and an opportunity for an informal hearing under part 16 (21 CFR part 16). However, FDA may rescind an exemption prior to notice and opportunity for a hearing under part 16 if the continuance of the exemption presents a serious risk to public health. In that case, FDA would provide the manufacturer an opportunity for a hearing as soon as possible after the rescission.

FDA reviews the information submitted in support of the request and determines whether to grant or deny the request based on whether the criteria specified in the statute are satisfied. If FDA determines that the information submitted is insufficient to enable it to determine whether an exemption is appropriate, FDA may request additional information from the manufacturer. If the manufacturer fails to respond within the timeframe requested, FDA will consider the exemption request withdrawn.

FDA estimates the additional annual burden for the information collection as a result of this proposed rule as follows:

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN

[When manufacturers choose to seek exemption from substantial equivalence] [1]

21 CFR and activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
§ 1107.1(b) Optional Preparation of Tobacco Product Exemption From Substantial Equivalence Request					
Cigar Manufacturers (Including Large, Small, and Importers)	343	0.96	328	12	3,936
Pipe Tobacco Manufacturers (Including Importers)	121	0.58	70	12	840
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	140	0.50	70	12	840
Total Hours (§ 1107.1(b))					5,616
§ 1107.1(c) Preparation of Additional Information for Tobacco Product Exemption From Substantial Equivalence Request					
Cigar Manufacturers (Including Large, Small, and Importers)	343	0.29	98	3	294
Pipe Tobacco Manufacturers (Including Importers)	121	0.17	21	3	63
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	140	0.15	21	3	63
Total Hours (§ 1107.1(c))					420
§ 25.40 Preparation of an Environmental Assessment					
Cigar Manufacturers (Including Large, Small, and Importers)	343	0.96	328	12	3,936
Pipe Tobacco Manufacturers (Including Importers)	121	0.58	70	12	840
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	140	0.50	70	12	840
Total Hours (§ 25.40)					5,616
Section 905(j)(1)(A)(ii) of the FD&C Act: If exemption granted, report submitted to demonstrate tobacco product is modified under section 905(j)(3), modifications are to a product that is commercially marketed and compliant, and modifications covered by exemptions granted by Secretary under section 905(j)(3)					
Cigar Manufacturers (Including Large, Small, and Importers)	343	1.43	491	3	1,473
Pipe Tobacco Manufacturers	121	0.87	105	3	315
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	140	0.75	105	3	315
Total Hours (section 905(j)(1)(A)(ii))					2,103
Total Hours Exemptions From Substantial Equivalence Requirements					13,755

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This number is estimated to be the total annual responses divided by the number of respondents, rounded to the nearest hundredth.

The estimated average burden per response (in hours) is based on the burdens associated with the existing information collection that applies to tobacco products currently subject to the FD&C Act (i.e., cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco). Of an estimated 2,806 new products entering the market through substantial equivalence exemptions (table 4) and SE reports (table 5), FDA estimates that 25 percent (701) will enter through substantial equivalence exemptions. FDA estimates that exemption requests will be used for an average of 1.5 products each; therefore, 468 requests for exemption (701 products divided by 1.5 requests) will be submitted annually, and it will take approximately 12 hours to prepare an exemption request for a total of 5,616 hours (468 × 12 hours).

FDA estimates, based on the existing information collection that applies to tobacco products currently subject to the FD&C Act, that 30 percent of the initial requests for information (468 × 0.30) will require additional information in support of the initial exemption request, and it is expected that it will take an average of 3 hours to prepare the additional information for a total of 420 hours (468 × 0.30 × 3).

FDA estimates that 604 manufacturers will submit 468 Environmental Assessments, and each EA is expected to take approximately 12 hours to prepare and submit one environmental assessment under part 25 in accordance with the requirements of § 25.40, as referenced in § 1107.1(b)(9) for a total of 5,616 hours (468 × 12).

FDA estimates that 604 respondents will prepare 701 responses (604 × 1.16) and each response will take approximately 3 hours to prepare the report required by section 905(j)(1)(A)(ii) for a total of 2,103 hours (701 × 1 × 3). This collection of information requires a manufacturer to submit a report at least 90 days prior to making an introduction or delivery into interstate commerce for commercial distribution of a tobacco product. The

report should contain the manufacturer's basis that the tobacco product is modified within the meaning of the exemption provision in section 905(j)(3) of the FD&C Act, the modifications are to a product that is commercially marketed and compliant with the FD&C Act, the modifications are covered by exemptions granted under section 905(j)(3), and a listing of actions taken to comply with any applicable requirements of section 907 of the FD&C Act.

FDA's estimates are based on full analysis of economic impacts (Ref. 194) and information gathered from other FDA-regulated products.

4. Reports Intended To Demonstrate the Substantial Equivalence of a New Tobacco Product (OMB Control Number 0910–0673)

Description of Respondents: Respondents to this collection of information are manufacturers of proposed deemed tobacco products who seek to submit a report to FDA demonstrating substantial equivalence for tobacco products under section 905(j)(1)(A)(i) of the FD&C Act.

Section 905(j)(1) of the FD&C Act authorizes FDA to establish the form and manner for the submission of information related to substantial equivalence. FDA issued guidance intended to assist persons submitting reports under section 905(j) of the FD&C Act and to explain, among other things, FDA's interpretation of the statutory sections related to substantial equivalence (see the guidance for industry and FDA staff on ''Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products'' (76 FR 789, January 6, 2011)).

FDA estimates the additional annual burden for the information collection as a result of this proposed rule as follows:

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
Sections 905(j)(1)(A)(i) and 910(a)					
Cigar Manufacturers (Including Large, Small, and Importers)	343	4.29	1,472	180	264,960
Pipe Tobacco Manufacturers (Including Importers)	121	2.61	316	180	56,880
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	140	2.26	316	180	56,880
Total Hours (sections 905(j)(1)(A)(i) and 910(a))					378,720
§ 25.40 Environmental Assessments					
Cigar Manufacturers (Including Large, Small, and Importers)	343	4.29	1,472	12	17,664
Pipe Tobacco Manufacturers (Including Importers)	121	2.61	316	12	3,792
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	140	2.26	316	12	3,792
Total Environmental Assessment					25,248
Total Hours (''Reports Intended to Demonstrate the Substantial Equivalence of a New Tobacco Product'')					403,968

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This number is estimated to be the total annual responses divided by the number of respondents, rounded to the nearest hundredth.

FDA has based these estimates on the full analysis of economic impacts (Ref. 194) and experience with the existing information collection that applies to tobacco products currently subject to the FD&C Act (i.e., cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco). Of an estimated 2,806 new products entering the market through substantial equivalence exemptions (table 4) and SE reports (table 5). FDA estimates that approximately 75 percent of the products (2,104) will enter the market through SE reporting. Therefore, FDA estimates that 604 respondents will prepare and submit 2,104 section 905(j)(1)(A)(i) SE reports each year and that it will take a manufacturer approximately 180 hours per report to prepare the reports of substantial equivalence for a new tobacco product. Therefore, FDA estimates the burden for submission of substantial equivalence information will be 378,720 hours (2,104 responses × 180 hours = 378,720 hours.) In addition, anyone submitting a report of substantial equivalence is also expected to submit an environmental assessment report under § 25.40. Six hundred and four respondents are expected to submit 2,104 reports, and take 12 hours to complete a single report, for a total of 25,248 burden hours (2,104 reports × 12 hours = 25,248 hours.)

FDA requests comments on these estimates and the methodology used to estimate the burdens.

5. Electronic Importer's Entry Notice (OMB Control Number 0910–0046)

Description of Respondents: Respondents to this collection of information are importers of tobacco products offered for import into the United States whose products meet the same requirements of the Tobacco Control Act as domestic tobacco products.

With the passage of the Tobacco Control Act, section 801 of the FD&C Act (21 U.S.C. 381) was amended to add tobacco products to the inventory of FDA-regulated products. The revised section 801 charges the Secretary of HHS, through FDA, with the responsibility of assuring foreign-origin, FDA-regulated foods, drugs, cosmetics, medical devices, radiological health,

and tobacco products offered for import into the United States meet the same requirements of the FD&C Act as do domestic products and the responsibility for preventing products from entering the country if they are not in compliance. The discharge of this responsibility involves close coordination and cooperation between FDA headquarters and field inspectional personnel and the U.S. Customs and Border Protection (CBP), as CBP is responsible for enforcing the revenue laws covering tobacco products. This collection of information in this section is being used by FDA to review and prevent imported products from entering the United States if the products do not meet the same requirements of the FD&C Act as do domestic products.

Until October 1995, importers were required to file manual entry on OMB-approved forms, which were accompanied by related documents. Information provided by these forms included information such as country of origin, name of the importing vessel, entry number (assigned by CBP), port of entry, the port of lading and unlading, value in U.S. dollars, shipper or manufacturer, importer of record, original consignee, broker, broker's reference number and CBP house box number, bill of lading numbers, and location of goods. FDA stopped using these paper forms effective October 1, 1995, to eliminate duplication of information and to reduce the paperwork burden both on the import community and FDA. FDA then developed and implemented an automated nationwide entry processing system, which enabled FDA to more efficiently obtain and process the information it requires to fulfill its regulatory responsibility.

Most of the information FDA requires to carry out its regulatory responsibilities under section 801 of the FD&C Act is already provided electronically by filers to CBP. Because CBP relays this data to FDA using an electronic interface, the majority of data submitted by the entry filer need be done only once.

FDA estimates the additional annual burden for the information collection as a result of this proposed rule as follows:

TABLE 6—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Importers of Cigars who are Considered Manufacturers.	222	159	35,224	0.14 (8½ minutes)	4,931
Importers of Pipe Tobacco Who Are Considered Manufacturers.	48	123	5,916	0.14 (8½ minutes)	828
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers.	140	68	9,520	0.14 (8½ minutes)	1,333
Total Hours Importation of Tobacco Products	.....	.....	.....	.....	7,092

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates the burden hours to be 7,092 burden hours (4,931 + 1,295 + 1,333 hours). This reflects the addition of proposed deemed tobacco products to the list of FDA's regulated products. The original (nontobacco) hourly burden for this information collection was based on FDA's estimate of imported tobacco products obtained from the United States Customs and Border Protection (CBP). When testing the use of electronic and paper forms, FDA determined that the average time for completing either electronic or manual entries was the same.

Based on the original data collected by FDA when the importer entry notice information collection was most recently approved, it is expected that each respondent will take 0.14 hour (8 ½ minutes) to respond. The estimated hours per response are expected to remain the same for tobacco importers.

FDA estimates that there will be no additional costs to provide import data electronically to FDA, as filers already have equipment and software in place to enable them to provide data to CBP via the automated system. Therefore, no additional software or hardware need be developed or purchased to enable filers to file the FDA data elements at the same time they file entries electronically with CBP.

6. Further Amendments to General Regulations of the Food and Drug Administration To Incorporate Tobacco Products (OMB Control Number 0910–0690)

Description of Respondents: Respondents are manufacturers, distributors, and other persons who export tobacco products not intended for sale in the United States.

In a rule published on February 2, 2012 (77 FR 5171), FDA amended certain of its general regulations to include tobacco products, where appropriate, in light of FDA's authority to regulate these products under the Tobacco Control Act (conforming amendments rule). The conforming amendments rule subjects tobacco products to the same general requirements that apply to other FDA-regulated products, where appropriate.

The conforming amendments rule amended 21 CFR 1.101(b), among other sections, to require persons who export human drugs, biologics, devices, animal drugs, cosmetics, and tobacco products that may not be sold in the United States to maintain records demonstrating their compliance with the requirements in section 801(e)(1) of the FD&C Act. Section 801(e)(1) requires exporters to keep records demonstrating that the exported product: (1) Meets with the foreign purchaser's specifications; (2) does not conflict with the laws of the foreign country; (3) is labeled on the outside of the shipping package that is intended for export; and (4) is not sold or offered for sale in the United States. These criteria also could be met by maintaining other documentation, such as letters from a foreign government agency or notarized certifications from a responsible company official in the United States stating that the exported product does not conflict with the laws of the foreign country.

FDA estimates the annual burden for the information collection as a result of this proposed rule as follows:

TABLE 7—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per record (in hours)	Total hours
21 CFR 1.101(b)					
Cigar Manufacturers (Large and Small)	42	3	126	22	2,772
Pipe Tobacco Manufacturers	10	3	30	22	660
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	27	3	81	22	1,782
Total Further Amendments to General Regulations of the Food and Drug Administrations to Incorporate Tobacco Products					5,214

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The Agency has estimated the number of respondents and burden hours associated with the recordkeeping requirements by reviewing Agency records and using Agency expert resources, and conferring with another Federal Agency with experience and information regarding tobacco product exporters. FDA estimates that 79 establishments (half of the 158 estimated total of all tobacco manufacturers listed in the collection of information approved under OMB control number 0910–0046 who manufacture cigars, pipe tobacco, and other tobacco products) could be involved in the exporting of all tobacco products annually. Based on previous recordkeeping estimates for the exporter's reporting burden in the existing OMB-approved collection of information (OMB control number 0910–0482, ''Export Notification and Recordkeeping Requirements''), each establishment will maintain an average of three records per year, and it will take each recordkeeper an average of 22 hours per recordkeeper to maintain each record. The Agency estimates 5,214 burden hours will be needed for tobacco product exporters to create and maintain records demonstrating compliance with section 801(e)(1) of the FD&C Act (79 recordkeepers × 3 records per year × 22 hours per record = 5,214).

B. Burdens Associated With Tobacco Products Currently Subject to the FD&C Act But Not Yet Approved by OMB

The information collections described in this section also involve collections that have been previously made available for public comment because they involved tobacco products currently subject to the FD&C Act. However, these information collections have not yet been approved by OMB. FDA is making them available for public comment again because we have revised the burdens to include proposed deemed tobacco products. In developing the burden estimates for proposed deemed tobacco products, FDA based the estimates on the existing collections that were previously made available for comment. FDA requests comments on these estimates and the methodology used to estimate the burdens.

1. Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007

Description of Respondents: Respondents to this collection of information are manufacturers of tobacco products who wish to demonstrate that their tobacco product was commercially marketed in the United States as of February 15, 2007, and is a grandfathered product not subject to premarket review.

On April 25, 2011, FDA announced the availability of a draft guidance document entitled ''Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007'' (76 FR 22903). This draft guidance provides information on how a manufacturer may demonstrate that a tobacco product was commercially marketed in the United States as of February 15, 2007, and is, therefore, a grandfathered product not subject to premarket review. The draft guidance recommends that the manufacturer provide evidence that may include, among other things, dated copies of advertisements, dated catalog pages, dated promotional material, and dated bills of lading. FDA recommends that the manufacturer submit as much information as possible to demonstrate that the tobacco product was commercially marketed in the United States as of February 15, 2007. FDA has not yet finalized this draft guidance.

The estimate for the number of hours in the existing collection is FDA's estimate of how long it might take one to review, gather, and submit dated information if making a request for an Agency determination.

FDA estimates the annual burden for the information collection as a result of this proposed rule as follows:

TABLE 8—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
Cigars—2 Largest Manufacturers	2	25	50	10	500
Other Cigar Manufacturers (excluding 2 largest manufacturers and including large and small cigars, and importers)	341	2.8	947	10	9,470
Pipe Tobacco Manufacturers (Including Importers)	121	1.7	204	10	2,040
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	140	1.5	210	10	2,100

TABLE 8—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent [2]	Total annual responses	Average burden per response (in hours)	Total hours
Total Hours Establishing that a Tobacco Product was Commercially Marketed in the United States as of February 15, 2007					14,110

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This number is estimated to be the total annual responses divided by the number of respondents, rounded to the nearest tenth.

FDA is basing the current estimates on the existing collection that applies to tobacco products currently subject to the FD&C Act. Annually, 2 large cigar manufacturers each are expected to submit 25 grandfathered product status requests each, for a total of 50 applications. The remaining cigar manufacturers are expected to submit 2.8 reports each annually. The total number of reports expected annually under sections 905(j)(1)(A)(i) and 910 of the FD&C Act for cigar manufacturers is 997 annually, which is 71 percent of the total number of grandfathered product applications expected annually. FDA also estimates it would take a cigar manufacturer approximately 10 hours to complete and submit for FDA review the evidence required by this collection of information and estimates that it should take approximately 9,970 hours annually (50 responses times 10 hours plus 947 responses times 10 hours for each response) for cigar manufacturers to respond to this collection of information.

Annually, the number of reports expected to be submitted under sections 905(j)(1)(A)(i) and 910 of the FD&C Act for pipe tobacco manufacturers is 1.7 product applications each. FDA estimates it would take a pipe tobacco manufacturer approximately 10 hours to complete and submit for FDA review the evidence required by this collection of information. Therefore, FDA estimates that it should take approximately 2,040 hours annually (204 responses times 10 hours for each response) for pipe tobacco manufacturers to respond to this collection of information.

Annually, other tobacco manufacturers (i.e., excluding cigars and pipe tobacco) are expected to submit 1.5 grandfathered product applications each. FDA estimates that it will take these manufacturers 10 hours to complete and submit for FDA review the evidence required by this collection of information. Therefore, FDA estimates that it should take approximately 2,100 hours (210 total annual responses times 10 hours for each response) for other manufacturers to respond to this collection of information.

The total number of burden hours, therefore, is 14,110 (500 hours + 9,470 hours + 2,040 hours + 2,100 hours). FDA has based these estimates on information from interactions with firms already subject to the FD&C Act and comments received regarding the submission of reports establishing that a tobacco product was commercially marketed in the United States as of February 15, 2007, from a notice of proposed information collection that covered tobacco products currently subject to the FD&C Act (76 FR 22903, April 25, 2011).

2. Applications for Premarket Review of New Tobacco Products

Description of Respondents: The respondents to this collection of information are manufacturers who are responsible for creating and submitting new tobacco product premarket applications and who wish to obtain an FDA order to allow them to market their product.

On September 28, 2011, FDA announced the availability of a draft guidance entitled ''Applications for Premarket Review of New Tobacco Products'' (76 FR 60055). This guidance, when finalized, will provide industry with information on how to submit an application for premarket review of new tobacco products as required by section 910 of the FD&C Act. Section 910(a)(1) of the FD&C Act requires persons who either create a new tobacco product that was not commercially marketed in the United States as of February 15, 2007, or modify a tobacco product in any way after February 15, 2007, including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery, or form of nicotine, or any other additive or ingredient, to submit a premarket tobacco product application and obtain an order from FDA authorizing the marketing of the product before the product may be introduced or delivered for introduction into interstate commerce. This requirement applies unless the product has been shown to be substantially equivalent to a tobacco product commercially marketed in the United States as of February 15, 2007, or is exempt from an SE determination under an issued regulation.

The draft guidance ''Applications for Premarket Review of New Tobacco Products'' explains the requirements and provides recommendations for the contents of an application for premarket review of a new tobacco product. Contents include a cover letter; an executive summary; full reports of all investigations of health risks; a full statement of all components, ingredients, additives, and properties, and of the principle or principles of operation of such tobacco product; a full description of methods of manufacturing and processing; a listing of all manufacturing, packaging, and control sites for the product; an explanation of how the product complies with applicable tobacco product standards; samples and components; and proposed labeling. If an applicant does not submit information on any of the previously mentioned items, the application should include a statement indicating which information is not being submitted and an explanation of why the information is not being submitted.

FDA also encourages persons who would like to study their new tobacco product to meet with the Office of Science at the Center for Tobacco Products (CTP) to discuss their investigational plan prior to distributing the product for investigational purposes. The request for a meeting should be sent in writing to the Director of CTP's Office of Science and should include adequate information for FDA to assess the potential utility of the meeting and to identify FDA staff necessary to discuss proposed agenda items. FDA is required to deny a PMTA and issue an order that the product may not be introduced or delivered for introduction into interstate commerce under section 910(c)(1)(A)(ii) of the FD&C Act if FDA finds that:

- The manufacturer has not shown that the product is appropriate for the protection of the public health,

• the manufacturing methods, facilities, or controls do not conform to manufacturing regulations issued under section 906(e) of the FD&C Act,

• the proposed labeling is false or misleading, or

• the manufacturer has not shown that the product complies with any tobacco product standard in effect under section 907 of the FD&C Act.

Under section 902(6)(A) of the FD&C Act, a tobacco product is deemed adulterated if it is a new tobacco product and does not have an order in effect under section 910(c)(1)(A)(i) of the FD&C Act. Under section 301(a) of the FD&C Act (21 U.S.C. 331(a)), the introduction or delivery for introduction into interstate commerce of any adulterated tobacco product is a prohibited act. Violations of section 910 of the FD&C Act are subject to regulatory and enforcement action by FDA, including, but not limited to, seizure and injunction.

FDA estimates the annual burden for the information collection as a result of this proposed rule as follows:

TABLE 9—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Obtaining an FDA Order Authorizing Marketing of Tobacco Product (the application)					
Cigar Manufacturers (Including Large, Small, and Importers)	1	1	1	5,000	5,000
Pipe Tobacco Manufacturers (Including Importers)	1	1	1	5,000	5,000
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	25	1	25	5,000	125,000
Total Hours Obtaining an FDA order authorizing marketing of tobacco product (the application)					135,000
Request for Meeting with CTP's Office of Science to Discuss Investigational Plan					
Cigar Manufacturers (Including Large, Small, and Importers)	1	1	1	4	4
Pipe Tobacco Manufacturers (Including Importers)	1	1	1	4	4
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	25	1	25	4	100
Total Hours Request for Meeting with CTP's Office of Science to Discuss Investigational Plan					108
§ 25.40 Environmental Assessments					
Cigar Manufacturers (Including Large, Small, and Importers)	1	1	1	12	12
Pipe Tobacco Manufacturers (Including Importers)	1	1	1	12	12
Other Tobacco, E-Cigarettes, and Nicotine Product Manufacturers	25	1	25	12	300
Total Hours § 25.40 Environmental Assessments					324
Total Hours "Applications for Premarket Review of New Tobacco Products"					135,432

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that it will take each respondent approximately 5,000 hours to obtain an order from FDA allowing the marketing of a new tobacco product. FDA's estimate includes anticipated burden for the writing of an application, including intra-company edits and approvals, of approximately 200 hours. In addition, FDA expects that conducting the necessary scientific investigations for a new tobacco product (either in-house or via a third-party consultant) will require, on average, 4,800 hours. FDA also estimates the number of PMTA applications that FDA expects to receive annually will be 27 (1 each from cigar and pipe tobacco manufacturers, and 25 from other tobacco manufacturers.) Therefore, the total annual burden for submitting PMTA applications is estimated to be 135,000 hours (27 respondents × 5,000 hours).

FDA notes that this 5,000 hour burden estimate is consistent with the burden included in the notice announcing the availability of the draft guidance "Applications for Premarket Review of New Tobacco Products" (76 FR 60055). We are clarifying here that a PMTA may require one or more types of studies including chemical analysis, nonclinical studies, and clinical studies. FDA expects that chemical and design parameter analysis would include the testing of applicable HPHCs and nonclinical analysis would include literature synthesis and, as appropriate, some combination of in vitro or in vivo studies, and computational analyses. For the clinical study component, one or more types of studies may be included to address, as needed, perception, use pattern, or health impact. It is possible that an applicant may not need to conduct any new nonclinical or clinical studies. We note that for most applications, FDA does not expect that applicants will include standardized clinical trials, like those conducted to support drug and device approvals.

For tobacco products already on the market at the time of the final rule,

much of the information required to support a PMTA may be obtained from previously published research on similar products. Therefore, FDA expects that a large portion of applications may be reviewed with no or minimal new nonclinical or clinical studies being conducted to support an application. In contrast, several nonclinical and clinical studies may be required for market authorization of a new product for which there is little to no understanding of its potential impact. The range of hours involved to compile these two types of applications would be quite variable.

FDA anticipates that the 27 potential respondents to this collection may need to meet with CTP's Office of Science to discuss their investigational plans. To request this meeting, applicants must compile and submit information to FDA for meeting approval. FDA estimates that it will take approximately 4 hours to compile this information, for a total of 108 hours additional burden (27 respondents × 4 hours).

FDA also estimates that the 27 potential respondents will take approximately 12 hours to prepare and submit an environmental assessment (for a total of 324 hours) in accordance with the requirements of section § 25.40, as referenced in § 1107.1(b)(9).

The total reporting burden is estimated to be 135,432 hours burden (135,000 hours + 108 hours + 324 hours.). FDA's estimates are based on the corresponding information collection estimates that apply to tobacco products currently subject to the FD&C Act and an assumption that manufacturers would submit applications for the premarket review of tobacco products.

FDA requests comments on these estimates and the methodology used to derive the estimates.

C. New Collections of Information That Applies Only to Proposed Deemed Tobacco Products

1. Exemption From the Required Warning Statement Requirement

Description of Respondents: Respondents are manufacturers and other persons who, to obtain an exemption from the required warning statement requirement, would be required to certify to FDA that their product does not contain nicotine, that the company has data to support that assertion, and, therefore, the product does not warrant the proposed addictiveness warning.

This proposed rule contains a new information collection that pertains to an exemption process related to the requirement to include the warning statement in proposed § 1143.3(a)(1). Proposed § 1143.3(c) would provide an exemption to the manufacturer of a product that otherwise would be required to include the warning statement in proposed § 1143.3(a)(1) on its packages and in its advertisements (i.e., ''WARNING: This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.''). To obtain this exemption, a manufacturer would be required to certify to FDA that its product does not contain nicotine, that the company has data to support that assertion, and, therefore, the product does not warrant the proposed addictiveness warning. For any product that obtains this exemption, the proposed section requires that the product bear the message: ''This is product derived from tobacco.'' The parties that package and label such products would share responsibility for ensuring that this alternative statement is included on product packages and in advertisements. While FDA is not aware of any currently marketed tobacco products that do not contain nicotine, the proposed rule would permit companies to obtain an exemption from this warning requirement in the event that such tobacco products are developed in the future.

FDA estimates the annual burden for the information collection as a result of this proposed rule as follows:

TABLE 10—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Certification Statement	1	1	1	20	20
Total Exemptions From the Required Warning Statement Requirement					20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated average burden per response is based on information collection estimates that apply to tobacco products currently subject to the FD&C Act. While very few certifications are expected for tobacco products that do not contain nicotine, FDA estimates that the number of certification submissions could rise if the Agency decides in the future to address not only nicotine, but any other addictive substances.

The estimated hours listed in the burden table for certification submissions reflect the time needed to test the product for nicotine and preparation and submission of the self-certification request. FDA expects that these types of certifications will be very rare and estimates that the Agency will receive on average one submission per year.

FDA notes that the labeling statements in proposed §§ 1143.3(a)(1) and 1143.5(a)(1) and the proposed alternative warning statement in proposed § 1143.3(c) (i.e., ''This product is derived from tobacco'') do not constitute a ''collection of information'' under the PRA. Rather, these labeling statements are ''public disclosure'' of information originally supplied by the Federal Government to the recipient for the purpose of ''disclosure to the public'' (5 CFR 1320.3(c)(2)).

The total burden for these new collections of information in this rulemaking is 629,036 reporting hours (53,659 + 1,000 + 13,755 + 403,968 + 7,092 + 14,110 + 135,432 + 20) and 5,214 recordkeeping hours for a total of 634,250 burden hours.

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the title ''The Food and Drug Administration Deems Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act;

Regulations Restricting the Sale and Distribution of Tobacco Products and Required Warnings for Tobacco Product Packages and Advertisements.''

In compliance with the PRA (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

X. Executive Order 13132; Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.''

Section 916(a)(1) of the FD&C Act (21 U.S.C. 387p) expressly preserves the authority of State, local, and tribal governments to ''to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter [21 U.S.C. 387 *et seq.*],'' except as expressly preempted by section 916(a)(2) of the FD&C Act. With the exception of the limited category of regulatory actions preempted by section 916(a)(2), State and local governments may adopt or continue to enforce all requirements pertaining to tobacco products that are in addition to, or more stringent than, the requirements of the Tobacco Control Act and its implementing regulations, including requirements relating to or prohibiting the sale and distribution of tobacco products, the advertising and promotion of tobacco products, and the use of tobacco products by individuals of any age.

Section 916(a)(2) of the FD&C Act is an express preemption provision. Section 916(a)(2)(A) expressly preempts any State or local requirement ''which is different from, or in addition to, any requirement under [chapter IX of the FD&C Act] relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk products.'' However, section 916(a)(2)(B) of the FD&C Act states that the express preemption provision in subparagraph (A) ''does not apply to requirements relating to'' among other things ''the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age.''

Executive Order 13132 requires Agencies to consult, to the extent, practicable, with State and local officials if the Agency foresees the possibility of a conflict between State law and Federally protected interests. FDA has not identified any State or local laws that would be preempted by these proposed restrictions. Nevertheless, FDA intends to consult with State and local jurisdictions about the potential impact this rule could have on their requirements.

XI. Environmental Impact

The Agency has carefully considered the potential environmental effects of deeming products to be subject to the FD&C Act and the proposed age and identification restrictions. FDA has concluded that the actions will not have a significant impact on the human environment, and that an environmental impact statement is not required. The Agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

The Agency also has determined under 21 CFR 25.30(k) that the labeling requirement is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required for the proposed health warning statements.

XII. Analysis of Impacts: Summary

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule would be an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA has determined that this proposed rule would have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2013) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would result in a one-year expenditure that meets or exceeds this amount.

The proposed rule consists of two coproposals, Option 1 and Option 2. The proposed Option 1 deems all products meeting the statutory definition of ''tobacco product,'' except accessories of a proposed deemed tobacco product, to be subject to chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act). Option 1 proposes additional provisions that would apply to proposed deemed products as well as to certain other tobacco products. Once deemed, tobacco products become subject to the FD&C Act and its implementing regulations. The FD&C Act requirements that would apply to proposed deemed products include establishment registration and product listing, ingredient listing, submissions prior to the introduction of new products, and labeling requirements. Free samples of proposed deemed tobacco products would also be prohibited. The additional provisions of this proposed rule include minimum age and identification requirements, vending machine restrictions, and required warning statements for packages and advertisements. Although deeming and the associated ''automatic provisions'' of the FD&C Act could be implemented on their own, the additional provisions could not be implemented for proposed deemed products without deeming.

While FDA currently has authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco under chapter IX of the FD&C Act, all additional tobacco products that meet the statutory definition, except

accessories of those proposed deemed tobacco products, would be subject to chapter IX of the FD&C Act and its implementing regulations under the proposed rule. These products would include cigars, pipe tobacco, hookah tobacco, electronic cigarettes, and other novel tobacco products such as dissolvable products and gels. Of these products to be deemed, cigars are the most commonly used.

The other coproposal, Option 2, is the same as Option 1 except that it exempts premium cigars. The proposed rule would define premium cigars as cigars that are wrapped in whole tobacco leaf; contain a 100 percent leaf tobacco binder; contain primarily long filler tobacco; are made by manually combining the wrapper, filler, and binder; have no filter, tip, or non-tobacco mouthpiece and are capped by hand; do not have a characterizing flavor other than tobacco; weigh more than 6 pounds per 1000 units; and sell for $10 or more per cigar.

The proposed deeming action differs from most public health regulations in that it is an enabling regulation. In other words, in addition to directly applying the substantive requirements of chapter IX of the FD&C Act and its implementing regulations to proposed deemed tobacco products, it enables FDA to issue further public health regulations related to such products. We expect that asserting our authority over these tobacco products will enable us to propose further regulatory action in the future as appropriate, and those actions will have their own costs and benefits. Without deeming these products to be subject to the FD&C Act, FDA would lack the authority to collect vital ingredient and health information about them. We would also lack the authority to take regulatory action with respect to them, if we determined it was appropriate to do so.

The direct benefits of making each of the proposed deemed tobacco products subject to the requirements of chapter IX of the FD&C Act are difficult to quantify without additional data, and we cannot predict the size of these benefits at this time. Among other effects, new products would be subject to evaluation to ensure they are appropriate for public health before they could be marketed, labeling could not contain misleading statements, and FDA would be made aware of the ingredients in proposed deemed tobacco products. If, without the proposed rule, new products would be developed that pose substantially greater health risks than those already on the market, the premarket requirements made effective by this proposed rule would prevent such products from appearing on the market and worsening the health effects of tobacco product use. The warning statements required by this proposed rule would provide information to consumers about the risks and characteristics of tobacco products. Consumers may act on this information by reducing their use of tobacco products. Consumers may also act on this information through compensating health behaviors. These responses would generate benefits associated with improved health and longevity.

The proposed rule as a whole would impose costs in the form of registration, submission, and labeling requirements. The deeming provision would impose immediate costs because manufacturers and importers of newly-regulated tobacco products would have to comply with registration, submission, and labeling requirements. Manufacturers of proposed deemed products, as well as some manufacturers of currently-regulated products, would have to comply with the warning label provisions, including costs for signs with warnings at point-of-sale for cigars sold singly without packaging. There would also be potential costs for removing noncompliant point-of-sale advertising and complying with vending machine restrictions.

The upfront costs for Option 1 are estimated to range from $74.3 to $347.0 million, with a primary estimate of $171.1 million, while the costs in subsequent years are estimated to range from $20.8 to $49.0 million, with a primary estimate of $30.6 million. The primary estimate for the present value of total quantified costs over 20 years is approximately $592.0 million at a 3 percent discount rate and $467.6 million at a 7 percent discount rate.

The upfront costs for Option 2 are estimated to range from $60.5 to $258.5 million, with a primary estimate of $132.8 million, while the costs in subsequent years are estimated to range from $17.4 to $38.4 million, with a primary estimate of $25.0 million. The primary estimate for the present value of total quantified costs over 20 years is approximately $476.4 million at a 3 percent discount rate and $375.0 million at a 7 percent discount rate.

The quantified costs of both options for the proposed rule can also be expressed as annualized values, as shown in Table 11.

TABLE 11—SUMMARY OF QUANTIFIED COSTS OVER 20 YEARS

[$ million]

	Lower bound (3%)	Primary (3%)	Upper bound (3%)	Lower bound (7%)	Primary (7%)	Upper bound (7%)
Present Value Option 1	365.2	592.0	1,010.1	281.4	467.6	810.2
Present Value Option 2	304.0	476.4	779.2	233.8	375.0	622.6
Annualized Value Option 1	23.8	38.6	65.9	24.8	41.2	71.5
Annualized Value Option 2	19.8	31.1	50.8	20.6	33.1	54.9

In addition to the benefits and costs of both options for the proposed rule, we assess the benefits and costs of several alternatives to the proposed rule, although we note that some may be outside of our current legal authority: deeming only, but exempt proposed deemed products from all labeling changes and premarket submission requirements; enforce premarket requirements only for machine-made cigars; change the grandfather date for new products to the date of final regulation; deeming only, but exempt proposed deemed products from all labeling changes; exempt handmade cigars from labeling changes; deeming only (no additional provisions); alter the compliance period for labeling changes.[10]

Primary estimates of the costs of the regulatory alternatives appear as present values and annualized values in Table 12.

[10] We note that not all of these regulatory alternatives are necessarily legally permissible.

TABLE 12—PRIMARY ESTIMATE OF QUANTIFIED COSTS FOR REGULATORY ALTERNATIVES

[Present and Annualized Values, $ million] [1]

Alternative	Present value (3%)	Present value (7%)	Annualized value (3%)	Annualized value (7%)
1—Deeming only; exempt from labeling changes and new product submissions	10.3	8.3	0.7	0.7
2—Enforce premarket requirements only for machine-made cigars	176.3	156.0	11.5	13.8
3—Change grandfather date to date of regulation	422.1	333.0	27.5	29.4
4—Deeming only; exempt from labeling changes	475.9	360.8	31.1	31.8
Proposed Rule Option 2: Exempt Premium Cigars from Regulation	476.4	375.0	31.1	33.1
5—Exempt handmade cigars from labeling changes	500.0	384.2	32.6	33.9
6—Deeming only; no additional provisions	541.6	425.3	35.3	37.5
7a—36-month compliance period for labeling changes	572.3	447.1	37.3	39.4
Proposed Rule Option 1—24-month compliance period for labeling changes	592.0	467.6	38.6	41.2
7b—12-month compliance period for labeling changes	646.1	523.2	42.2	46.2

[1] Nonquantified benefits are described in the text.

The majority of the compliance costs of this proposed rule are fixed, but a portion of the costs are variable. The costs imposed will be borne primarily by manufacturers and importers; some of the costs will be passed on to consumers in the form of higher prices. The average increase in the price of proposed deemed tobacco products, however, would be very small relative to current prices.

In addition to the costs described in Tables 11 and 12, the proposed rule would lead to private costs in the form of reduced revenues for firms in affected sectors. Additionally, if excise taxes on tobacco products remain at current levels, annual tax revenues would fall with reduced use.

Domestic tobacco product manufacturers and importers, most of which are small, would be the entities primarily affected by this rule. In particular, we expect domestic cigar manufacturers to be affected because they are more likely than importers to be completely specialized in a newly regulated product, and the handmade segment of the cigar market is characterized by a large number of low-volume products. Even though user fees are a transfer payment and not a societal cost, they are a cost from the standpoint of the manufacturers who must pay them. Therefore, user fees are included in the estimated burden for small domestic cigar manufacturers. For Option 1, the estimated upfront costs range from $390,000 to $759,000 per domestic cigar manufacturing establishment, and the average annual costs are estimated to range from $450,000 to $541,000. Several of the regulatory alternatives that would reduce costs are analyzed as potential regulatory relief options for small businesses.

The full analysis of economic impacts is available in the docket for this proposed rule (Ref. 193) and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

FDA requests comments on all inputs, methods and results that appear in the economic analysis.

XIII. Request for Comments

A. General Information About Submitting Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document.

B. Public Availability of Comments

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.* As a matter of Agency practice, FDA generally does not post comments submitted by individuals in their individual capacity on *http://www.regulations.gov.* This is determined by information indicating that the submission is written by an individual, for example, the comment is identified with the category ''Individual Consumer'' under the field titled ''Category (Required),'' on the ''Your Information'' page on *www.regulations.gov.* For this proposed rule, however, FDA will not be following this general practice. Instead, FDA will post on *http://www.regulations.gov* comments to this docket that have been submitted by individuals in their individual capacity. If you wish to submit any information under a claim of confidentiality, please refer to 21 CFR 10.20.

C. Information Identifying the Person Submitting the Comment

Please note that your name, contact information, and other information identifying you will be posted on *http://www.regulations.gov* if you include that information in the body of your comments. For electronic comments submitted to *http://www.regulations.gov,* FDA will post the body of your comment on *http://www.regulations.gov* along with your state/province and country (if provided), the name of your representative (if any), and the category identifying you (e.g., individual, consumer, academic, industry). For written submissions submitted to the Division of Dockets Management, FDA will post the body of your comments on *http://www.regulations.gov,* but you can put your name and/or contact information on a separate cover sheet and not in the body of your comments.

XIV. References

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

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List of Subjects

21 CFR Part 1100

Smoking, Tobacco.

21 CFR Part 1140

Advertising, Labeling, Smoking, Tobacco.

21 CFR Part 1143

Advertising, Labeling, Packaging and containers, Smoking, Tobacco.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended as follows:

■ 1. Add part 1100 to subchapter K to read as follows:

PART 1100—TOBACCO PRODUCTS SUBJECT TO FDA AUTHORITY

Sec.
1100.1 Scope.
1100.2 Requirements.
1100.3 Definitions.

Authority: 21 U.S.C. 387a(b), 387f(d); Secs. 901(b) and 906(d), Pub. L. 111–31; 21 CFR 16.1 and 1107.1; 21 CFR 1.1, 1.20, 14.55, 17.1, and 17.2.

§ 1100.1 Scope.

Option 1

In addition to FDA's authority over cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, FDA deems all other products meeting the definition of *tobacco product* under section 201(rr) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(rr)), except accessories of such other tobacco products, to be subject to the Federal Food, Drug, and Cosmetic Act.

Option 2

In addition to FDA's authority over cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco, FDA deems all other products meeting the definition of *tobacco product* under section 201(rr) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(rr)), except accessories of such other tobacco products and cigars that are not within the scope of the covered cigar definition in § 1100.3, to be subject to the Federal Food, Drug, and Cosmetic Act.

§ 1100.2 Requirements.

Option 1

Cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and all other tobacco products, except accessories of such other tobacco products, are subject to chapter IX of the Federal Food, Drug, and Cosmetic Act and its implementing regulations. Tobacco product is defined in section 201(rr) of the Federal Food, Drug, and Cosmetic Act.

Option 2

Cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, covered cigars, and all other tobacco products, except accessories of such other tobacco products and cigars that are not within the scope of the covered cigar definition in § 1100.3, are subject to chapter IX of the Federal Food, Drug, and Cosmetic Act and its implementing regulations. Tobacco product is defined in section 201(rr) of the Federal Food, Drug, and Cosmetic Act.

§ 1100.3 Definitions.

Option 1

Tobacco product. As stated in section 201(rr) of the Federal Food, Drug, and Cosmetic Act in relevant part, a tobacco product:

(1) Means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product); and

(2) Does not mean an article that is a drug defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, a device defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, or a combination product described in section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)).

Option 2

Cigar means a tobacco product that:

(1) Is not a cigarette and

(2) Is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco.

Covered cigar means any cigar as defined in this part, except a cigar that:

(1) Is wrapped in whole tobacco leaf;

(2) Contains a 100 percent leaf tobacco binder;

(3) Contains primarily long filler tobacco;

(4) Is made by combining manually the wrapper, filler, and binder;

(5) Has no filter, tip, or non-tobacco mouthpiece and is capped by hand;

(6) Has a retail price (after any discounts or coupons) of no less than $10 per cigar (adjusted, as necessary, every 2 years, effective July 1st, to account for any increases in the price of tobacco products since the last price adjustment,);

(7) Does not have a characterizing flavor other than tobacco; and

(8) Weighs more than 6 pounds per 1000 units.

Tobacco product. As stated in section 201(rr) of the Federal Food, Drug, and Cosmetic Act in relevant part, a tobacco product:

(1) Means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product); and

(2) Does not mean an article that is a drug defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, a device defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, or a combination product described in section 503(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)).

PART 1140—CIGARETTES, SMOKELESS TOBACCO, AND COVERED TOBACCO PRODUCTS

■ 2. The heading for part 1140 is revised to read as shown above.

■ 3. The authority citation for 21 CFR part 1140 continues to read as follows:

Authority: 21 U.S.C. 301 *et seq.;* Sec. 102, Pub. L. 111–31.

■ 4. Revise § 1140.1 to read as follows:

§ 1140.1 Scope.

(a) This part sets out the restrictions under the Federal Food, Drug, and Cosmetic Act on the sale, distribution, and use of cigarettes, smokeless tobacco, and covered tobacco products.

(b) The failure to comply with any applicable provision in this part in the sale, distribution, and use of cigarettes, smokeless tobacco, and covered tobacco products renders the product misbranded under the Federal Food, Drug, and Cosmetic Act.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

■ 5. Revise § 1140.2 to read as follows:

§ 1140.2 Purpose.

The purpose of this part is to establish restrictions on the sale, distribution, and use of cigarettes, smokeless tobacco, and covered tobacco products in order to reduce the number of children and adolescents who use these products, and to reduce the life-threatening consequences associated with tobacco use.

■ 6. Revise § 1140.3 to read as follows:

§ 1140.3 Definitions.

For the purposes of this part:

Cigar means a tobacco product that:

(1) Is not a cigarette and

(2) Is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco.

Cigarette. (1) Means a product that:

(i) Is a tobacco product and

(ii) Meets the definition of the term ''cigarette'' in section 3(1) of the Federal Cigarette Labeling and Advertising Act; and

(2) Includes tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette or as roll-your-own tobacco.

Cigarette tobacco means any product that consists of loose tobacco that is intended for use by consumers in a cigarette. Unless otherwise stated, the requirements applicable to cigarettes under this chapter also apply to cigarette tobacco.

Covered tobacco product means any tobacco product deemed to be subject to the Federal Food, Drug, and Cosmetic Act pursuant to § 1100.2 of this chapter, but excludes any component or part that does not contain tobacco or nicotine.

Distributor means any person who furthers the distribution of a tobacco product, whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption. Common carriers are not considered distributors for the purposes of this part.

Importer means any person who imports any tobacco product that is intended for sale or distribution to consumers in the United States.

Manufacturer means any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished tobacco product.

Nicotine means the chemical substance named 3-(1-Methyl-2-pyrrolidinyl)pyridine or C[10]H[14]N[2], including any salt or complex of nicotine.

Package means a pack, box, carton, or container of any kind in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

Point of sale means any location at which a consumer can purchase or

otherwise obtain tobacco products for personal consumption.

Retailer means any person who sells tobacco products to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under this part.

Smokeless tobacco means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

Tobacco product. As stated in section 201(rr) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(rr)) in relevant part, a tobacco product:

(1) Means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product) and

(2) Does not mean an article that is a drug defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, a device defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, or a combination product described in section 503(g) of the Federal Food, Drug, and Cosmetic Act.

■ 7. Revise § 1140.10 to read as follows:

§ 1140.10 General responsibilities of manufacturers, distributors, and retailers.

Each manufacturer, distributor, importer, and retailer is responsible for ensuring that the cigarettes, smokeless tobacco, or covered tobacco products it manufactures, labels, advertises, packages, distributes, imports, sells, or otherwise holds for sale comply with all applicable requirements under this part.

■ 8. Revise § 1140.14 to read as follows:

§ 1140.14 Additional responsibilities of retailers.

(a) In addition to the other requirements under this part, each cigarette and smokeless tobacco retailer is responsible for ensuring that all sales of cigarettes or smokeless tobacco to any person comply with the following requirements:

(1) No retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age;

(2)(i) Except as otherwise provided in paragraph (a)(2)(ii) of this section and in § 1140.16(c)(2)(i), each retailer must verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age;

(ii) No such verification is required for any person over the age of 26;

(3) Except as otherwise provided in § 1140.16(c)(2)(ii), a retailer may sell cigarettes or smokeless tobacco only in a direct, face-to-face exchange without the assistance of any electronic or mechanical device (such as a vending machine);

(4) No retailer may break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size defined in § 1140.16(b), or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use; and

(5) Each retailer must ensure that all self-service displays, advertising, labeling, and other items, that are located in the retailer's establishment and that do not comply with the requirements of this part, are removed or are brought into compliance with the requirements under this part.

(b) Notwithstanding the requirements in paragraph (a) of this section and in addition to the other requirements under this part, each retailer of covered tobacco products is responsible for ensuring that all sales of such covered tobacco products to any person comply with the following requirements:

(1) No retailer may sell covered tobacco products to any person younger than 18 years of age;

(2)(i) Except as otherwise provided in paragraph (a)(2)(ii) of this section and in § 1140.16(c)(2)(i), each retailer must verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age;

(ii) No such verification is required for any person over the age of 26; and

(3) A retailer may not sell covered tobacco products with the assistance of any electronic or mechanical device (such as a vending machine), except in facilities where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

■ 9. Add part 1143 to subchapter K to read as follows:

PART 1143—REQUIRED WARNING STATEMENTS

Sec.
1143.1 Definitions.
1143.3 Required warning statement regarding addictiveness of nicotine.
1143.5 Required warning statements for cigars.
1143.7 Language requirements for required warning statements.
1143.9 Irremovable or permanent required warning statements.
1143.11 Does not apply to foreign distribution.
1143.13 Effective date.

Authority: 21 U.S.C. 387a(b), 387f(d); Pub. L. 111–31, 123 Stat. 1776.

§ 1143.1 Definitions.

Option 1

For purposes of this part:

Covered tobacco product means any tobacco product deemed to be subject to the Federal Food, Drug, and Cosmetic Act pursuant to § 1100.2 of this chapter, but excludes any component or part of a tobacco product that does not contain nicotine or tobacco.

Package means a pack, box, carton, or container of any kind in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

Required warning statement means a textual warning statement required to be on packaging and in advertisements for cigarette tobacco, roll-your-own tobacco, cigars, and other covered tobacco products.

Roll-your-own tobacco means any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Option 2

For purposes of this part:

Cigar means a tobacco product that:

(1) Is not a cigarette and

(2) Is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco.

Covered cigar means any cigar as defined in this part, except a cigar that:

(1) Is wrapped in whole tobacco leaf;

(2) Contains a 100 percent leaf tobacco binder;

(3) Contains primarily long filler tobacco;

(4) Is made by combining manually the wrapper, filler, and binder;

(5) Has no filter, tip, or non-tobacco mouthpiece and is capped by hand;

(6) Has a retail price (after any discounts or coupons) of no less than $10 per cigar (adjusted, as necessary, every 2 years, effective July 1st, to account for any increases in the price of tobacco products since the last price adjustment);

(7) Does not have a characterizing flavor other than tobacco; and

(8) Weighs more than 6 pounds per 1000 units.

Covered tobacco product means any tobacco product deemed to be subject to the Federal Food, Drug, and Cosmetic Act pursuant to § 1100.2 of this chapter, but excludes any component or part of

a tobacco product that does not contain nicotine or tobacco.

Package means a pack, box, carton, or container of any kind in which a tobacco product is offered for sale, sold, or otherwise distributed to consumers.

Required warning statement means a textual warning statement required to be on packaging and in advertisements for cigarette tobacco, roll-your-own tobacco, covered cigars, and other covered tobacco products.

Roll-your-own tobacco means any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

§ 1143.3 Required warning statement regarding addictiveness of nicotine.

(a) *Packages.* (1) For cigarette tobacco, roll-your-own tobacco, and covered tobacco products other than cigars, it is unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States such product unless the tobacco product bears the following required warning statement on each product package: ''*WARNING:* This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.''

(2) The required warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(i) Be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(ii) Be printed in a font size that ensures that the text occupies the greatest possible proportion of the warning area set aside for the text required;

(iii) Be printed in conspicuous and legible Helvetica bold or Arial bold type and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the package;

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section; and

(v) Be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

(3) A retailer of any tobacco product covered by paragraphs (a)(1) and (2) of this section will not be in violation of this section for packaging that:

(i) Contains a health warning;

(ii) Is supplied to the retailer by the tobacco product manufacturer, importer, or distributor, and

(iii) Is not altered by the retailer in a way that is material to the requirements of this section.

(b) *Advertisements.* (1) For cigarette tobacco, roll-your-own tobacco, and covered tobacco products other than cigars, it is unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of the tobacco product to advertise or cause to be advertised within the United States any tobacco product unless each advertisement bears, in accordance with the requirements of this section, the required warning statement specified in paragraph (a)(1) of this section.

(2) The required warning statement must appear in the upper portion of the area of the advertisement within the trim area as follows:

(i) Occupy at least 20 percent of the area of the advertisement;

(ii) Be printed in a font size that ensures that the text occupies the greatest possible proportion of the warning area set aside for the text required;

(iii) Be printed in conspicuous and legible Helvetica bold or Arial bold type and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the advertisement;

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section;

(v) Be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other textual information in the advertisement have the same orientation; and

(vi) Be surrounded by a rectangular border that is the same color as the text of the required warning statement and that is not less than 3 millimeters (mm) or more than 4 mm.

(3) This paragraph (b) applies to a retailer only if that retailer is responsible for or directs the health warning required under the paragraph. However, this paragraph does not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a health warning or contains a health warning that has been altered by the retailer in a way that is material to the requirements of this section.

(c) *Self-certification.* A tobacco product that would otherwise be required to bear the warning in paragraph (a)(1) of this section but does not contain nicotine is not required to bear the warning in paragraph (a)(1) of this section on packages or advertisements if the manufacturer of the tobacco product has submitted to FDA a confirmation statement certifying to be true and accurate that the product does not contain nicotine and that the manufacturer has data to support that assertion. Any product not required to bear the warning in paragraph (a)(1) of this section must include the following statement ''This product is derived from tobacco.'' on all packages and advertisements in accordance with the requirements of this part.

§ 1143.5 Required warning statements for cigars.

Option 1

(a) *Packages.* (1) It is unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigar the package of which fails to bear one of the following required warning statements on each product package:

(i) WARNING: Cigar smoking can cause cancers of the mouth and throat, even if you do not inhale.

(ii) WARNING: Cigar smoking can cause lung cancer and heart disease.

(iii) WARNING: Cigars are not a safe alternative to cigarettes.

(iv) WARNING: Tobacco smoke increases the risk of lung cancer and heart disease, even in nonsmokers.

(v) WARNING: This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.

(2) Each required warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(i) Be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(ii) Be printed in a font size that ensures that the text occupies the greatest possible proportion of the warning area set aside for the text required;

(iii) Be printed in conspicuous and legible Helvetica bold or Arial bold type and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the package;

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section; and

(v) Be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on that principal display panel have the same orientation.

(3) No person may manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigar without a required warning statement, except for cigars that are sold individually and not in a product package. For cigars that are sold individually and not in a product package, the required warning statements must be posted at the retailer's point-of-sale in accordance with the following:

(i) The warnings in paragraph (a) of this section must be placed on a sign that is a minimum of 8.5 x 11 inches, posted on or within 3 inches of each cash register where payment may be made so that the sign(s) are unobstructed in their entirety and can be read easily by each consumer making a purchase;

(ii) The sign must be clear, legible, and conspicuous and be printed in black Helvetica bold or Arial bold type against a solid white background in at least 17 point type with appropriate space between the warning statements

(iii) Be printed in a manner that contrasts by typography, layout, or color, with all other printed material; and

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section.

(4) A retailer of any cigar covered by paragraphs (a)(1) and (2) of this section will not be in violation of this section for packaging that:

(i) Contains a health warning;

(ii) Is supplied to the retailer by a manufacturer, importer, or distributor who has the required state, local, or Alcohol and Tobacco Tax and Trade Bureau (TTB)-issued license or permit, if applicable, and

(iii) Is not altered by the retailer in a way that is material to the requirements of this section.

(b) *Advertisements.* (1) It is unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of cigars to advertise or cause to be advertised within the United States any cigar unless each advertisement bears, in accordance with the requirements of this section, one of the required warning statements specified in paragraph (a)(1) of this section.

(2) Each required warning statement must appear in the upper portion of the area of the advertisement within the trim area as follows:

(i) Occupy at least 20 percent of the area of the advertisement;

(ii) Be printed in a font size that ensures that the text occupies the greatest possible proportion of the warning area set aside for the text required;

(iii) Be printed in conspicuous and legible Helvetica bold or Arial bold type and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the advertisement;

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section;

(v) Be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other textual information in the advertisement have the same orientation; and

(vi) Be surrounded by a rectangular border that is the same color as the text of the required warning statement and that is not less than 3 mm or more than 4 mm.

(3) This paragraph (b) applies to a retailer only if that retailer is responsible for or directs the warning statements required under the paragraph. However, this paragraph of this section does not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a health warning or contains a health warning that has been altered by the retailer in a way that is material to the requirements of this section.

(c) *Marketing requirements.* (1) The warning statements required in paragraph (a)(1) of this section must be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of cigar sold in product packaging and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the cigar manufacturer, importer, distributor, or retailer to, and approved by the Food and Drug Administration.

(2) The warning statements required in paragraph (a)(1) of this section must be rotated quarterly in alternating sequence in each advertisement for each brand of cigar in accordance with a plan submitted by the cigar manufacturer, importer, distributor, or retailer to, and approved by the Food and Drug Administration.

Option 2

(a) *Packages.* (1) It is unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any covered cigar the package of which fails to bear one of the following required warning statements on each product package:

(i) WARNING: Cigar smoking can cause cancers of the mouth and throat, even if you do not inhale.

(ii) WARNING: Cigar smoking can cause lung cancer and heart disease.

(iii) WARNING: Cigars are not a safe alternative to cigarettes.

(iv) WARNING: Tobacco smoke increases the risk of lung cancer and heart disease, even in nonsmokers.

(v) WARNING: This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.

(2) Each required warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(i) Be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(ii) Be printed in a font size that ensures that the text occupies the greatest possible proportion of the warning area set aside for the text required;

(iii) Be printed in conspicuous and legible Helvetica bold or Arial bold type and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the package;

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section; and

(v) Be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on that principal display panel have the same orientation.

(3) No person may manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any covered cigar without a required warning statement, except for covered cigars that are sold individually and not in a product package. For covered cigars that are sold individually and not in a product package, the required warning statements must be posted at the retailer's point-of-sale in accordance with the following:

(i) The warnings in paragraph (a) of this section must be placed on a sign that is a minimum of 8.5 x 11 inches, posted on or within 3 inches of each cash register where payment may be made so that the sign(s) are

unobstructed in their entirety and can be read easily by each consumer making a purchase;

(ii) The sign must be clear, legible, and conspicuous and be printed in black Helvetica bold or Arial bold type against a solid white background in at least 17 point type with appropriate space between the warning statements;

(iii) Be printed in a manner that contrasts by typography, layout, or color, with all other printed material; and

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section.

(4) A retailer of any covered cigar covered by paragraphs (a)(1) and (2) of this section will not be in violation of this section for packaging that:

(i) Contains a health warning;

(ii) Is supplied to the retailer by a manufacturer, importer, or distributor who has the required state, local, or TTB-issued license or permit, if applicable, and

(iii) Is not altered by the retailer in a way that is material to the requirements of this section.

(b) *Advertisements.* (1) It is unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of covered cigars to advertise or cause to be advertised within the United States any covered cigar unless each advertisement bears, in accordance with the requirements of this section, one of the required warning statements specified in paragraph (a)(1) of this section.

(2) Each required warning statement must appear in the upper portion of the area of the advertisement within the trim area as follows:

(i) Occupy at least 20 percent of the area of the advertisement;

(ii) Be printed in a font size that ensures that the text occupies the greatest possible proportion of the warning area set aside for the text required;

(iii) Be printed in conspicuous and legible Helvetica bold or Arial bold type and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the advertisement;

(iv) Be capitalized and punctuated as indicated in paragraph (a)(1) of this section;

(v) Be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other textual information in the advertisement have the same orientation; and

(vi) Be surrounded by a rectangular border that is the same color as the text of the required warning statement and that is not less than 3 mm or more than 4 mm.

(3) This paragraph (b) applies to a retailer only if that retailer is responsible for or directs the warning statements required under the paragraph. However, this paragraph of this section does not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a health warning or contains a health warning that has been altered by the retailer in a way that is material to the requirements of this section.

(c) *Marketing requirements.* (1) The warning statements required in paragraph (a)(1) of this section must be randomly displayed in each 12-month period, in as equal a number of times as is possible on each applicable brand of covered cigar and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the cigar manufacturer, importer, distributor, or retailer to, and approved by the Food and Drug Administration.

(2) The warning statements required in paragraph (a)(1) of this section must be rotated quarterly in alternating sequence in each advertisement for each applicable brand of covered cigar in accordance with a plan submitted by the cigar manufacturer, importer, distributor, or retailer to, and approved by the Food and Drug Administration.

§ 1143.7 Language requirements for required warning statements.

The text in each required warning statement required in § 1143.3 or § 1143.5 must be in the English language, except as follows:

(a) In the case of an advertisement that appears in a non-English publication, the text in the required warning statement must appear in the predominant language of the publication whether or not the advertisement is in English, and;

(b) In the case of an advertisement that appears in an English language publication but that is not in English, the text in the required warning statement must appear in the same language as that principally used in the advertisement.

§ 1143.9 Irremovable or permanent required warning statements.

The required warning statements required by this section must be indelibly printed on or permanently affixed to the package or advertisement. These warnings, for example, must not be printed or placed on a product label affixed to a clear outer wrapper that is likely to be removed to access the product within the package.

§ 1143.11 Does not apply to foreign distribution.

The provisions of this part do not apply to a manufacturer or distributor of tobacco products that does not manufacture, package, or import tobacco products for sale or distribution within the United States.

§ 1143.13 Effective date.

This part will take effect 24 months after [date of publication of final rule]. The effective date will be with respect to the date of manufacture, provided that, in any case, beginning 30 days after the effective date, a manufacturer may not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture that is not in conformance with this part.

Dated: April 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09491 Filed 4–24–14; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 86

Boating Infrastructure Grant Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 86

[Docket No. FWS–R9–WSR–2011–0083; FVWF941009000007B–XXX–FF09W11000]

RIN 1018–AW64

Boating Infrastructure Grant Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose changes in the regulations governing the administration of the national Boating Infrastructure Grant Program (BIG). We published a proposed rule in the **Federal Register** on March 28, 2012. We received 22 responses from the public during the 60-day comment period that ended May 29, 2012. Fifteen of the responses contained comments applicable to the proposed rule, and 11 asked for more time to review the proposed rule. Some comments expressed full support, and others suggested changes. We amend the proposed rule based on these comments and our further review and consideration of the proposed rule. The amended proposed rule gives the public a 90-day comment period.

DATES: We will accept comments received or postmarked on or before July 24, 2014.

ADDRESSES: You may submit comments, identified by docket number FWS–R9–WSR–2011–0083, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R9–WSR–2011–0083; U.S. Fish and Wildlife Service; Division of Policy and Directives Management; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.
- *Hand Delivery/Courier:* U.S. Fish and Wildlife Service; Division of Policy and Directives Management; 4501 North Fairfax Drive, Room 2042 PDM; Arlington, VA 22203.

We will not accept email or faxes. All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. We will post all comments received without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and other information on the rulemaking process, see the ''Public Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa E. Van Alstyne, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703–358–1942.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule for the Boating Infrastructure Grant Program on March 28, 2012 (77 FR 18767). We received 22 responses from the public. Fifteen included comments applicable to the proposed rule, and 11 included requests for more time to review the proposed rule and asked us to extend or reopen the comment period. We decided to respond to applicable comments and offer a second comment period. We respond by clarifying certain sections, leaving sections unchanged where we received support, and making changes based on our further review.

In the proposed rule published on March 12, 2012, we suggested new names for the Tier 1 and Tier 2 subprograms to reflect their role in BIG. Several commenters stated they did not agree with the name changes from ''Tier 1'' to ''BIG-Basic'' and from ''Tier 2'' to ''BIG-Competitive.'' Their concern was that the term ''Basic'' misrepresents the intent of the program and compared to ''Competitive,'' the public could misunderstand it as being a noncompetitive program, when Tier 1 programs may be highly competitive on a State level. We received no other recommendations for new terms to replace the tiered system, but in this amended proposed rule, we propose using ''BIG Standard'' and ''BIG Select.'' These names relate to the level and action taken nationally for each grant program. We award BIG Standard grants to States for up to a standard amount that we announce each year for eligible projects. We award BIG Select grants based on a national selection process. We use the terms ''BIG Standard'' and ''BIG Select'' in this amended proposed rule and ask for comments on their use.

We amend sections of the amended proposed rule by:

(1) Removing § 86.44.

(2) Renumbering §§ 86.45 through 86.47 as §§ 86.44 through 86.46.

(3) Adding a new § 86.60 and redesignating § 86.60 in the proposed rule as § 86.61 in the amended proposed rule.

Response to Public Comments

We arrange the public comments by sections of the proposed rule. Some comments relate to topics that apply to more than one section of the proposed rule. We discuss some of these as they apply to the entire proposed rule or address them in only one applicable section. We will not duplicate a response we give in one section in another section, but will add information if needed to clarify. We do not present comments exactly as stated unless we enclose text with quotes. Some comments represent recommendations or opinions from several commenters with similar ideas or positions. We state in the response to each comment any action taken and explain our response. Some public comments led us to reexamine sections beyond those that the public commented on specifically. Based on this reexamination, we amend the proposed rule to improve clarity, consistency, organization, or comprehensiveness. We change the proposed rule for clarifications and uniformity that we do not discuss. We do not explain minor changes made that do not significantly affect the amended proposed rule. We discuss any substantive changes that resulted from this reexamination in our responses to the comments.

We use the terms ''current'' or ''current rule'' to refer to 50 CFR part 86 or any section or paragraph of 50 CFR part 86 that became effective after publication of a final rule in the **Federal Register** at 66 FR 5282, January 18, 2001. We use the terms ''proposed'' or ''proposed rule'' to refer to the proposed rule published in the **Federal Register** at 77 FR 18767, March 28, 2012. We use the term ''amended'' or ''amended proposed rule'' to refer to this proposed rule, amended from the proposed rule published on March 28, 2012.

We received some comments that asked questions relating to general grant management and some that ask for more guidance, but not at the level of this rulemaking. We do not discuss these questions in our comment review unless we amend the proposed rule based on the comment or it is relevant to changes we make. We will consider the concerns raised and respond through another form of communication, training, or information-sharing Web sites. We share grant information on our Financial Assistance Wiki at *http://fawiki.fws.gov.*

We include all sections of the amended proposed rule and indicate if we received no comments.

Subpart A—General

Section 86.1 What does this part do?

Comment 1: Several comments state concern that calling Tier 1 ''Basic'' and Tier 2 ''Competitive'' is misleading, suggesting that grantees may use Tier 1 funds only for basic boating needs and that the selection process is not competitive.

Response 1: We agree with their comments. As discussed in the background for this amended proposed rule, the names of the subprograms must not be misleading or suggest limitations that do not apply to the type of projects funded under either subprogram. We must be clear that both subprograms are competitive. States develop their process for project review and selection for both subprograms and forward Tier 2 applications for a national ranking. We amend this section to describe Tier 1 as ''BIG Standard'' and Tier 2 as ''BIG Select.'' States determine BIG Standard grants at the State level and may apply for a grant for one or multiple projects for an amount up to the maximum stated in the annual Request for Applications (RFA). We score and rank BIG Select grants through the national competitive process. We welcome comments on these terms.

Section 86.2 What is the purpose of BIG?

Comment 2: You should not identify producing information and educational materials as a purpose of BIG.

Response 2: Producing and distributing information about BIG is in the current rule at 50 CFR 86.11 describing what the national BIG Program does. It is an eligible action, but the Sportfishing and Boating Safety Act of 1998 (Act) does not identify it as a purpose. We amend the proposed rule to remove it from § 86.2(b), but it will remain an eligible action at § 86.11.

Section 86.3 What terms do I need to know?

Capital Improvement

Comment 3: Recommend that the definition for capital improvement have a threshold of $10,000 to be consistent with 50 CFR part 80.

Response 3: We do not make the requested change. In an upcoming rulemaking action, we will propose to amend the definition in 50 CFR 80 to agree with the $25,000 threshold.

Comment 4: From this definition, it is not clear if a grant is a single capital improvement or if a single grant can include multiple capital improvements. Need to clarify to apply to useful life.

Response 4: We do not change the definition based on this comment. We make clarifications in § 86.75 for how to apply the definition of capital improvement to grants and useful life.

Comment 5: Consider the total cost of the project instead of the cost of each structure when determining useful life.

Response 5: We do not change the definition for capital improvement. How to apply the definition as it relates to useful life is in § 86.75. We amend § 86.75 to propose an option to have one useful life for a grant based on the value of each capital improvement.

Construction

Comment 6: Remove the word ''acquiring'' in the definition of construction.

Response 6: We amend the term as suggested. Although acquiring land is part of construction in general terms, it is an ineligible action in BIG.

Eligible Vessel

Comment 7: You expanded the definition and removed the word 'motorized.' This will allow solo outrigger canoes and dragon boats to be eligible vessels. Allowing non-motorized boats also conflicts with § 86.13 because these boats do not need a pumpout or 6 feet of water depth. Recommend adding 'motorized' to the definition and amending the definition to allow sailboats 26 feet or longer with no motors.

Response 7: We do not change the proposed definition as requested in this comment. We amend the term to clarify the vessels not included.

Outrigger canoes and dragon boats are specialty vessels that do not typically travel long distances from one place to another, have no deck, and are not designed for people to live or spend any length of time on board for common recreational purposes. We do not consider them the type of transient vessel that we should include as an eligible vessel.

The word 'motorized' is not in 16 U.S.C. 777g–1. When we included the word in the current rule, it had the unintended consequence of excluding nonmotorized, live aboard, recreational sailboats used throughout the country to travel from place to place. The term as presented in the amended proposed rule clarifies the intent of the program.

Maintenance

Comment 8: Clarify the term ''maintenance.''

Response 8: We replace the word 'routine' with 'operational' to clarify the definition. We add a clarifying sentence and examples of maintenance actions that are eligible. See also § 86.14 for other changes that relate to maintenance.

Real Property

Comment 9: Add the word ''permanent'' to breakwaters in the definition of real property.

Response 9: We amend the term as suggested.

Comment 10: Remove ''fixed'' in front of ''docks'' from definition.

Response 10: We do not make this change. Removable docks are personal property and not real property.

Transient

Comment 11: Modify the definition so it is clear that day-use facilities are acceptable.

Response 11: We amend the definition to clarify that either day use or staying up to 10 days is acceptable.

Terms Added or Amended

To clarify the proposed rule, we add definitions for ''Contractor,'' ''Marketing,'' ''Personal property,'' ''Program income,'' ''Project cost,'' and ''Public communication.'' We amend the definitions for ''Match'' and ''Operation'' and add examples for operation.

Subpart B—Program Eligibility

Section 86.10 Who may apply for a BIG grant?

No comments.

Section 86.11 What activities are eligible for funding?

We received several comments supporting the proposed changes in this section. We acknowledge the support, in addition to comments requesting changes. We replace proposed § 86.11(b) to address preaward costs. We add § 86.11(c) to address funding pumpouts through the Clean Vessel Act program (CVA). We move the proposed § 86.11(b) to the end of this section at § 86.11(d).

We received several comments asking us to clarify actions as they relate to marketing, public relations, and information and education. In addition to adding terms at § 86.3, we amend this section to move § 86.11(a)(6) to (5) and add examples of information and education. We move § 86.11(a)(7) to (6) and include the use of BIG funds for monitoring BIG project performance and accomplishments.

We received some comments that supported including as eligible actions services that support clean boating and good environmental practices at facilities. Other commenters suggested that they support the concept, but not as an eligible action under BIG. Some thought this section was too open and

could lend too much flexibility to the use of BIG funds. Others thought it might be difficult to manage the possible project options that could result.

After much consideration we remove § 86.11(a)(5) in the amended proposed rule. We discuss these positive practices later in the amended proposed rule, but only as they apply to BIG-funded facility construction and physical amenities. We believe the changes allow the program to move forward with positive actions in the framework of acceptable, eligible projects.

Comment 12: Add the current § 86.20(e) on preliminary costs to the proposed § 86.11(a)(2).

Response 12: We do not change § 86.11(a)(2). We capture all of the eligible actions from the current rule at § 86.20(e) in the proposed rule at § 86.11(a)(2). We amend the proposed rule to include a new § 86.11(b) to clarify preaward costs.

Comment 13: Change the proposed rule at § 86.11(a)(3) to read, ''one-time dredging of . . .''

Response 13: We do not make this change. We propose to limit the amount of funds the applicant can request for dredging actions, but not limit how often it can ask for funding to dredge the same basin. The proposed rule limits dredging to 10 percent of the BIG-funded facility costs. A BIG-funded project that includes dredging must use at least 90 percent of the grant for other eligible costs. This requirement places the burden on the grantee to show that the majority of its BIG-funded actions are not dredge related. If a BIG-funded facility succeeds in securing other BIG funds in the future to dredge in the same basin, it shows that the project is acceptable to reviewers and competed well with the dredge project included. We expect dredging to have a small funding impact on the program, and we propose not to include unnecessary restrictions.

Comment 14: Grantees should fund pumpouts exclusively through CVA and it should not be an eligible action under BIG.

Response 14: The primary purpose of BIG is to build and maintain a facility for eligible vessels. By definition, eligible vessels are transient recreational vessels at least 26 feet long. The vast majority of eligible vessels will have a marine sanitation device that eligible users will want to empty when they use a BIG-funded facility. We are consistent with the current rule by requiring a pumpout as an eligible action for all BIG-funded facilities, unless another is available within 2 miles or the exceptions apply that we describe in § 86.43(n)(1).

Not all States participate in CVA. States that do participate in CVA may not be able to fund a pumpout at the BIG project location with CVA money due to grant unavailability or for administrative reasons. Pumpouts will remain an eligible action in BIG, but to emphasize the preference to use CVA when available, we add § 86.11(c). This paragraph allows States to limit the use of BIG funds for pumpouts and direct BIG subgrantees in their State to CVA or other funding sources. We encourage subgrantee applicants to work with their States to secure CVA funding before including the action as a cost in a BIG application. If an applicant includes a pumpout as part of its BIG-funded project, we expect the applicant to explain its efforts to secure CVA funding and state why it is not available. As CVA does not require allocating costs among recreational users the same way as BIG does, most applicants will find they receive more funds for their pumpout facility from a CVA grant than from a BIG grant. We expect that requests for funding a pumpout through BIG will be limited to projects in a State that does not participate in CVA, does not have CVA funds available, or has legal or administrative restrictions.

Comment 15: We received a few comments suggesting that using BIG funds to support clean boating and good environmental practices as stated in § 86.11(a)(5) could deplete BIG funds for actions not directly benefitting the purpose of BIG. Another comment suggested we say, ''include interpretive signs regarding clean boating and good environmental practices at eligible facilities.'' One commenter was concerned that grantees would use BIG funds directly for Clean Marina programs in States. Another comment supported services that support clean boating and good environmental practices because these practices support Service goals, but stated that we should define the eligible services.

Response 15: We discuss in the narrative introducing comments for § 86.11 that we remove § 86.11(a)(5) from the amended proposed rule. We do not amend the proposed rule to include interpretive signs because signs that tell boaters how to use the facility are already eligible costs. We do not intend to fund Clean Marina actions directly through BIG, but some actions eligible under BIG may support clean boating and environmentally sound practices. We discuss services and practices throughout the amended proposed rule as they apply to the purpose of BIG.

Comment 16: Production of information and educational materials should be limited to BIG Basic grants for widespread promotion of BIG and not focused on one facility.

Response 16: We do not make this change. Other comments support the ability of marinas to use BIG funds to advertise their project, and we agree.

Comment 17: Add design and construction of boat wash stations as eligible under BIG.

Response 17: We do not make this change and do not support this activity as an eligible cost under BIG. The primary purpose of boat wash stations is to remove aquatic invasive species and other transportable elements from a boat that a person trailers to another location. Trailered boats are not eligible vessels, so this is not an eligible cost. Boat wash stations are eligible actions for States under the Sport Fish Restoration program.

Comment 18: Allowing other activities to be eligible with Service approval is too vague, and the process is not clear.

Response 18: We move this language from § 86.11(b) to (d) and add that we will describe any other approved actions eligible for funding in the annual RFA. We do not expect these actions to happen often. This paragraph gives the Service the ability to add or expand eligible BIG actions that will benefit applicants and the public while informing applicants so that all may include the added action if they choose.

Section 86.12 What construction and services does boating infrastructure include?

Comment 19: Pumpouts should not be included as boating infrastructure, and grantees should fund them through CVA.

Response 19: We discuss the need for installing pumpouts in Response 14. For these reasons, we support pumpouts as boating infrastructure. We do not make the requested change.

Comment 20: ''Oil recycling, bilge-water cleaning, absorbent fuel collars, and other services and structures that support clean and safe boating'' should not be part of boating infrastructure.

Response 20: We amend § 86.12(e) to include ''equipment and structures for collecting, disposing, or recycling liquid or solid waste from eligible vessels.'' This change eliminates disposable items as eligible, places emphasis on equipment and structures, and focuses on the needs of eligible vessels.

Section 86.13 What design features must a BIG-funded facility have ?

We acknowledge comments in support of parts of this section. We delete § 86.13(c). We amend § 86.13(b) and direct you to § 86.43(n) for more information on pumpout waivers. We add at § 86.13(c) in the amended proposed rule that we will consider water access less than 6 feet deep if the State can demonstrate it will serve the typical eligible users at that location. We add § 86.13(d) to clarify that all design features do not have to be part of the proposed BIG-funded project, but can be an existing part of the marina, a feature added in a prior BIG grant, or a feature funded through other sources.

Comment 21: Change § 86.13(b) and (c) of the proposed rule on waivers and signs to remove the responsibility of the marina owner from telling boaters where the nearest pumpout is and posting signs.

Response 21: We amend §§ 86.13 and 86.43 as discussed above to clarify the process to request a waiver from the pumpout requirements in the grant application. We remove the requirement for posting signs, allowing you to inform boaters using other communication methods.

Comment 22: Change this section to recommend pumpouts instead of requiring them.

Response 22: We discuss our support of pumpouts in Responses 14 and 19. For these reasons, we support pumpouts as a required design feature, with the exceptions we allow at § 86.43(n)(1).

Comment 23: This section contains both operational and design features. Recommend you distinguish them.

Response 23: We agree and change the section to show both types of features.

Section 86.14 How can I receive BIG funds for maintenance?

We received several comments that support grantees being responsible for maintenance of the BIG-funded facility for its useful life. The Act lists maintenance as one of the purposes of BIG, so we must allow maintenance and balance it with need and responsibility. We amend the proposed rule to emphasize ''facility'' maintenance, allow maintenance only during the grant period, and describe the need for grantees to apply user fees to maintenance after the grant period. We leave the flexibility for States to decide maintenance needs and priorities in BIG Standard grants. Based on one comment, we reviewed the proposed rule to clarify the use of the term 'maintenance' and make it consistent throughout the amended proposed rule. This section has significant changes in the amended proposed rule.

Comment 24: You should not allow maintenance as an eligible expense under BIG.

Response 24: As discussed above, the Act clearly states facility maintenance is an eligible purpose under BIG.

Comment 25: You must prohibit grantees and subgrantees from asking for BIG funding in the future when they charge user fees. Further, when a grantee or subgrantee accepts grant funds they agree to maintain the project for the useful life.

Response 25: We amend the language to clarify that only maintenance done during the grant period is eligible for BIG funding. Applicants must clearly show maintenance is necessary and reasonable for the BIG-funded project. We add a new § 86.14(a)(2) to emphasize that grantees and subgrantees may apply fees toward maintenance. We add in the new § 86.14(b)(2) that if a grantee uses BIG funds for maintenance at a facility that has received BIG funds in the past, the useful life must be extended. This continues the responsibility of the operator and gives extended benefits to the public. We also add § 86.14(b)(3) to allow a State to limit or exclude funding maintenance to subgrantees in its State. The amended § 86.14(c) allows maintenance for BIG Select projects only during the grant period and only if the maintenance directly supports the project.

We cannot guarantee future BIG funding to grantees and subgrantees, so they must commit to using other funding sources for maintaining a BIG-funded facility for its useful life.

Comment 26: Maintenance seems to be restricted to structures and equipment, which is more restrictive than the current rule.

Response 26: The current rule defines *maintain* as activities that ''allow the facility to continue to function, such as repairing docks. These activities exclude routine janitorial activities.'' We clarify the term ''maintenance'' in this amended proposed rule, but we do not make it more restrictive.

Section 86.15 How can dredging qualify as an eligible action?

We received comments supporting the approach to limit funds for dredging. We also received comments asking us to limit dredging projects to the existing channel and designated slips, allow one-time-only dredging, and remove dredging as an eligible activity. As stated in Response 13, we propose to allow dredging under the restrictions discussed and not add any other restrictions or limitations. We add a general explanation of dredging in the amended proposed rule to clarify that dredging in this part includes all actions related to dredging. The limits on using BIG funds for dredging include all these actions.

Comment 27: How does an applicant certify it has resources to maintain the dredge project?

Response 27: We do not change this section based on this comment. We require a grantee or subgrantee to maintain a dredge project for its useful life, as we would for any other actions that are part of the project and have a useful life. When reviewing an application, we will consider the information the applicant presents to support its ability to maintain the dredge project. By signing the application, an applicant certifies to all BIG requirements.

Section 86.16 What actions are ineligible for BIG funding?

We received several comments supporting as ineligible actions: retail businesses, parking lots, roads, administering or managing the facility, and purchasing or operating boats to transport boaters. Based on comments and our review we added § 86.16(a)(10) to include as ineligible: supplies and other expendable personal property not directly related to the project objectives.

Comment 28: You should reword this section to clarify which actions you consider marketing.

Response 28: We amend this section to add examples of marketing activities.

Section 86.17 Who must own the site of a BIG-funded facility?

Based on comments received for this section, we define the term ''contractor'' at § 86.3.

Comment 29: What does an applicant do to show a contractual arrangement for operation of a site?

Response 29: We do not change this section based on this question. If the applicant does not own the site where a BIG-funded project is proposed, the applicant will work with us to document an acceptable arrangement to ensure that the site will be available for the useful life of the BIG-funded facility.

Comment 30: Requiring the Service to approve general management activities seems cumbersome.

Response 30: We do not intend to review all business management activities, but if the applicant is not the operator, we must assess the operator's ability to manage a BIG-funded facility before we award a grant in this competitive program.

Section 86.18 How can I ensure that BIG-funded projects continue to serve their intended purpose for their useful life?

We received several comments supporting the obligation to record a Federal interest. We amend this section to include flexibility to allow the Regions to consider options for low-value or low-risk improvements and for States to pass along the requirement to subgrantees. Some commenters asked us about the process for carrying out this section. We will publish procedural guidance and examples at *http://fawiki.fws.gov.*

Section 86.19 What if a project would benefit both eligible and ineligible users?

We amend this section to make allocating costs simpler. We emphasize that you must allocate costs if part of the BIG-funded facility or a discrete element will benefit both eligible and ineligible users. Under the current rule, we may reject applications before scoring if the applicant does not allocate costs correctly. We amend the proposed rule to allow us to work with applicants to clarify how you allocate costs before the Director approves awards. We also propose an exception to allocating costs where there are secondary uses or purposes that would benefit all users that do not exclude eligible users from the primary purpose. We give examples on how to allocate costs. We invite comments that tell us if these changes improve the approach to allocating costs.

Comment 31: How is it possible to assign 100 percent of project costs to the BIG grant when there is a match requirement?

Response 31: We add a definition to proposed § 86.3 for the term ''project cost'' to clarify that we mean the Federal share and all non-Federal funds given as match or added to the Federal grant to complete the project.

Comment 32: Staff is not always available at BIG facilities to monitor, so how do we enforce facility use?

Response 32: This section addresses only costs associated with the project and not the actual use. We emphasize that you need to describe the project in your application considering design and anticipated use and how you will allocate costs based on your analysis.

Comment 33: What is a ''discrete element?''

Response 33: We add a description for what we consider a ''discrete element.''

Comment 34: It is difficult to post signs in mixed-use areas and enforce them.

Response 34: We amend this paragraph to include only the need to inform ineligible boaters of areas or actions that are fully restricted or limited. For example, if you design slips for only eligible users and you assign 100 percent of costs to BIG funding, you must inform the public that these slips are limited to eligible users. If you design a tie-up area for exclusive use by eligible boats during certain periods, but all others may use during ''off periods,'' you must include details in your application and explain how you allocate costs. When the project is complete, you must inform all users. If you propose an action where you expect mixed use, you must describe it in your application, allocate costs accordingly, and you do not need to post any signs.

Comment 35: Changes over time may lead to an unexpected use of a BIG-funded facility. States cannot predict and may not be aware of the changes when they occur.

Response 35: The State is ultimately responsible for the grant. Section 86.18(e) explains that the grantee must have a contract with subgrantees that includes minimum requirements. The contract must prohibit the subgrantee from altering the ownership, purpose, or use of the BIG-funded facility without approval. The State may include other requirements to protect its interest in the grant project. If the State becomes aware of changes, it must contact us to find out how to address them.

Subpart C—Federal Funds and Match

Section 86.30 What is the source of BIG funds?

No comments.

Section 86.31 How does the Service know how much money will be available for BIG grants each year?

No comments.

Section 86.32 What are the match requirements?

We received support for making land or an interest in land ineligible.

Comment 36: We disagree with excluding the value of structures completed before the beginning of the funding period.

Response 36: We amend this section to allow the value of a structure completed before the beginning of the funding period if the Service approves it as a preaward cost. We considered how we might allow the value of existing buildings that you may want to repurpose as part of the BIG-funded facility, but we do not change this section in this regard. We were unable to find a method that we could fairly and simply apply to the situation because of the many variables, such as the entire building not being used for the project, the building benefitting both eligible and ineligible users, and the repurposing being part of other projects. We welcome suggestions on approaches for using the value of existing structures as part of the BIG-funded project.

Section 86.33 What information must I provide on match commitments, and where do I provide it?

We clarify this section and remove the requirement for a letter signed by a third party's authorized representative when they intend to provide match. This is consistent with the changes at § 86.43 that remove the requirement for letters of commitment in an application. This requirement complicates the grant process because third party information often changes between the time of the grant application and project completion.

Section 86.34 What if a partner is not willing or able to follow through on a match commitment?

We received comments asking us to remove or simplify this section. We amend this section to remove some of the notices you must give us and emphasize that States are ultimately responsible for all actions and funding commitments in the grant. We still require States to tell us how it will compensate for loss of match if a partner does not follow through on its commitment.

Subpart D—Application for a Grant

We make changes to this subpart in the amended proposed rule by deleting § 86.44 and incorporating the information into § 86.43. The ''other documents and information'' discussed in § 86.44 are now included in the project statement.

Section 86.40 What are the differences between BIG Basic grants and BIG Competitive grants?

We received support in setting a minimum award for BIG Basic (now BIG Standard) grants that may increase as funds allow, but will not decrease. We received support for the $1.5 million limit for BIG Competitive (now BIG Select) grants, but also concern that the limit may not be reasonable in future years. We amend this section to say we ''may'' limit BIG Select to a maximum of $1.5 million, but we will post the maximum award in the annual RFA. This allows the Service to respond to current need.

Comment 37: We want the Service to allow States to apply for multiple BIG

Standard projects using separate applications as long as they do not exceed the maximum funding limit.

Response 37: We agree and amend this section to allow the Service Regions to decide how the State should apply for BIG Standard grants as long as they do not exceed the maximum annual award.

Comment 38: Verify that States can ask for an amount that is less than the BIG Standard annual funding limit.

Response 38: We do not change this section based on this comment. The proposed rule says States may request any amount ''up to'' the annual funding limit. We will emphasize this in the annual RFA.

Section 86.41 How do I apply for a grant?

We amend this section to require States to send applications through *http://www.grants.gov.*

Comment 39: Emphasize that subgrantees must apply to the State and not directly to the Service.

Response 39: We amend § 86.41(a) to tell subgrantees they must send an application to the State following State rules.

Section 86.42 What do I have to include in an application?

A comment asked us to remove information related to postaward actions. We do not make the change requested in this comment because this section addresses the application process.

Section 86.43 What information must I put in the project statement?

As discussed in the introductory paragraph to this subpart, we incorporate information from § 86.44 in the proposed rule into § 86.43 in the amended proposed rule. We separate 'purpose' and 'objectives' to emphasize the differences between them, changing from paragraph (b) to paragraphs (b) and (c). Paragraphs (c) through (f) of this section are now (d) through (g). Paragraphs (g) through (i) are now (i) through (k). We delete paragraph (j), *Multipurpose projects and equitable cost for BIG-funded facilities,* and add the information to paragraph (i), *Budget narrative.* We amend § 86.43(i) to emphasize the need for good cost estimates in your budget narrative. We delete paragraph (m), *Grantee's contact,* and add paragraph (h), *Project officer.* Paragraphs (k) through (l) are now (l) through (m). We add paragraphs (n), *General,* and (o), *Ranking criteria.* Our responses to comments reference the proposed rule unless we specify otherwise.

We received several comments regarding grant management issues such as State control of the project, relationships to other grants, preaward costs, and timeline. We will address these items through training and grant management venues. We change the amended proposed rule as described in the introductory paragraph to this subpart.

Comment 40: In § 86.43(d)(2) delete ''known contractor'' or explain what a contractor is.

Response 40: We keep the phrase ''known contractor'' because a State or subgrantee may assign a major role to a contractor. If you know who your contractor will be when you submit your application, you must include this information. We added the definition of a contractor at § 86.3 to clarify.

Comment 41: Amend § 86.43(e) to make useful life information optional. It is unreasonable to expect a design at the time they apply.

Response 41: We do not make the requested change. If the application includes a capital improvement, the applicant should be able to estimate the useful life. We give further guidance at §§ 86.74 and 86.75.

Comment 42: In § 86.43(i) remove the word ''must'' as some operators do not charge a fee.

Response 42: We do not change this section. The proposed rule requires that a BIG-funded project charge fees similar to those charged at other facilities in the area with the same services. If all of the comparable facilities in the area offer services without charge, then the BIG-funded facility may also offer services without charge. We amend § 86.90 to clarify. If an operator charges a fee, it must be in line with that charged by other local facilities.

Section 86.44 What other documents and information must I include in a grant application?

We remove this entire section in the amended proposed rule as described above. We remove the information found in § 86.44(a)(3) of the proposed rule and no longer require letters of commitment from partners. We received comments asking where to ask for a waiver from the requirement to have a pumpout. We describe in § 86.43(n) of the amended proposed rule how to ask for a waiver in the application.

Section 86.45 What if my BIG project needs more than the awarded Federal share and required match to complete?

This is § 86.44 in the amended proposed rule.

We received comments that support this section asking for discrete, stand-alone projects and supporting a fair, competitive process. Based on comments received and our review we: (1) Move § 86.45(a)(3) in the proposed rule to § 86.44(a)(2) in the amended proposed rule and § 86.45(a)(2) in the proposed rule to § 86.44(a)(3) in the amended proposed rule;

(2) Add § 86.44(b) to the amended proposed rule to address actions if you do not have enough funds and cannot complete a project; and

(3) Move § 86.45(b) and (c) in the proposed rule to § 86.44(c) and (d), respectively, in the amended proposed rule with no further changes.

Comment 43: We recommend that all grant applications include a cost analysis and if a BIG Select project does not have enough funds to complete the project, the Service make it a priority and automatically award that project a grant from BIG Standard.

Response 43: Both BIG Standard and BIG Select are competitive programs, BIG Standard at the State level and BIG Select at the national level. Allowing BIG Select projects automatically to receive BIG Standard grant funds to complete a project would make the grants noncompetitive, reduce State control of BIG Standard grants, and allow applicants to be careless with cost estimates. We do not make this change.

Section 86.46 If the Service does not select my grant application for funding, can I apply for the same project the following year?

This section is now § 86.45 in the amended proposed rule.

We received one comment supporting the clarity on unsuccessful applications.

Section 86.47 What changes can I make in a grant application after I submit it?

This section is now § 86.46 in the amended proposed rule.

We amend this section to allow the Service and the applicant to discuss the approach in the application for how to allocate costs between eligible and ineligible benefits during the period between when they apply and when the Service awards the grant. Currently, if the grantee does not allocate costs properly, we consider the application ineligible and we do not score it. This practice results in rejecting potentially good projects based solely on improperly allocating costs. This change allows us to score the application and gives the applicant the chance to adjust costs prior to the Director approving awards.

Subpart E—Project Selection

Section 86.50 Who ranks BIG Competitive applications?

No comments.

Section 86.51 What criteria does the Service use to evaluate BIG Competitive applications?

We received many comments and recommendations for the scoring criteria, and we respond by making significant changes from the proposed rule. We more accurately describe what the ranking criteria relate to by changing headings to paragraph (a) ''Need, Access, and Cost Efficiency,'' paragraph (b) is ''Match and Partnerships,'' and paragraph (c) ''Innovation.''

We switch criteria at § 86.51(a)(2) and (a)(3), but do not change the language. We move criteria at § 86.51(b)(2) to (b)(1) and clearly state that the criterion at paragraph (b)(1) is to consider match greater than the minimum required. We amend § 86.51(b)(2) to address in-kind contributions at any level.

We amend § 86.51(c)(1) to address innovations that improve eligible user access. We amend § 86.51(c)(2) to address innovations that improve the overall BIG-funded project. We add § 86.51(c)(3) to include a criterion for a marina that demonstrates a high level of commitment to environmental compliance, sustainability, and stewardship through a recognized program. We offer this provision because the actions these marinas have taken to receive this recognition indicates they exceed required compliance and show they are applying innovation and forward thinking to operating the facility where the BIG-funded project is located. This action demonstrates commitment to maintaining the high quality of the facility where the BIG-funded project is located, which will help to attract boaters, keep boaters, and extend the useful life of the BIG-funded project.

We reduce the points for each criterion and now have a maximum total of 36 points instead of 100. We may award up to 20 points (56 percent) for ''Need, Access, and Cost Efficiency,'' 10 points (28 percent) for ''Match and Partnerships,'' and 6 points (16 percent) for ''Innovation.''

The criteria for Innovation clearly discuss the physical components, technology, and techniques used to improve access, improvements to the BIG-funded project that will extend useful life, and actions taken to improve operations beyond basic regulatory requirements. Many of the considerations for ''Innovation'' directly relate to construction actions or improving useful life of the facility.

Section 86.52 What does the Service consider when evaluating a project on the need for more or improved boating infrastructure?

We received no comments. We add a new paragraph at § 86.52(c) in the amended proposed rule that considers access created for eligible vessels by reducing wave action, increasing depth, or other physical improvements. We move § 86.52(c) and (d) to § 86.52(d) and (e), respectively.

Section 86.53 What does the Service consider when evaluating a project on boater access to significant destinations and services that support transient boater travel?

This section was moved to § 86.54 in the amended proposed rule to reflect the changes at § 86.51. We amend § 86.53(a)(3) to change from the word ''credibility'' to ''reliability.'' We received one comment that fully supports this section and another that wants it removed because of perceived difficulty in assessing all the variables. We add paragraph (b) to tell you that you must describe the benefits in the project statement under *Need.* We add paragraph (c) to say that we will consider all benefits to eligible users described in the project statement and add paragraph (d) to give an example on how we may apply this criterion. The current method assesses cost benefits based on the number of slips. We change the requirement to assess cost benefits as they relate to the needs described in the project statement.

Section 86.54 What does the Service consider on benefits to eligible users that justify the cost of the project?

This section was moved to § 86.53 in the amended proposed rule to reflect the changes at § 86.51.

Comment 44: When you evaluate a project based on access to significant destinations and services that support transient boater travel, the process favors projects close to developed areas. Many areas of interest may be isolated and in quiet, rustic areas. We feel this system penalizes those projects.

Response 44: When we consider significant destinations, it means an area where eligible users would want to travel. You must describe the need for access to the remote, rustic area in the project statement. You must include information that addresses § 86.54 (a)–(c). You should also include supporting information and demonstrate to reviewers how the project destination will successfully attract eligible users. It is possible for these projects to receive points for this criterion.

Section 86.55 What does the Service consider when evaluating a project for partnerships?

We changed this section in the amended proposed rule to ''What does the Service consider as a partner for the purposes of these ranking criteria?''

Section 86.56 What does the Service consider when evaluating a project that includes greater than the minimum match?

We add a section to the amended proposed rule to separate match and have a criterion for greater than minimum match and a criterion for in-kind match. The new section in the amended proposed rule is § 86.57 ''What does the Service consider when evaluating in-kind contributions that a partner brings to a project?'' We present amendments, comments, and responses for §§ 86.55 through 57 together because they all discuss the criteria related to partners and the subject matter overlaps.

We reorganize the sections in the amended proposed rule to reflect the changes in the criteria at § 86.51(b) that address one criterion for greater than minimum match and a second criterion for in-kind match. We simplify § 86.55 for what qualifies as a partner under this amended proposed rule by removing the requirement for at least 1 percent match, a letter of commitment, and other requirements that place extra emphasis on the number of partners or the specific contributions of a specific partner. We expand § 86.56 to allow that the greater than minimum match may come from any grantee, single partner, or combination of grantee and partners. We include a table that designates the points we will award for increased match. We add § 86.57 to the amended proposed rule to give direction on in-kind contributions that a partner brings.

Some comments questioned the need to consider partners for each application because BIG as a program offers the opportunity for Federal and State agencies to form partnerships with private subgrantees. The Act states that, ''in awarding grants,'' we give priority to projects that include public/private partnerships, so we must consider the partnerships in each application. Public/private partnerships leverage Federal and other public funds with private funds to increase support for the project. We must include review of private partnerships for all applications and will give greater consideration for projects that include a private contribution.

We also received comments that convey the difficulties in sustaining partnerships in a project that may take several years to begin construction and several more to complete. Often, a partner cannot fulfill the commitment. We will still award higher points for match above the minimum, but will consider the total cash match and not count each contributor. This system will allow small communities to receive smaller donations or commitments and apply them as one amount toward match. It will benefit the grantee and subgrantees to foster lasting partnerships to meet the excess match. The same logic applies to in-kind match, that it allows project involvement to foster many smaller relationships and receive credit for those contributions. We award fewer total points for in-kind contributions.

Comment 45: Clarify what is a duty of an agency. Other agencies may contribute work they are doing only because of the BIG-funded project, and the State cannot complete the project without the other agency's action.

Response 45: We reword this section to clarify. We make a clear distinction between a mandatory duty and a voluntary action. If an agency has an obligation to act, it is not a partner. It is fulfilling its duty as an agency. Another agency is a partner if it offers a voluntary action to benefit the project. For example, if another agency offers the use of its equipment, labor, or other action within the scope of work for the BIG-funded project, it is a partner and we will consider its contribution as in-kind. A voluntary action may support the BIG-funded project, but is not part of the scope of BIG-funded work, for example, a parks department that builds a recreational area near the BIG-funded facility that offers entertainment to eligible users. It may contribute to the amenities at the project, but we will not consider it a partner for the in-kind criterion.

Section 86.57 What does the Service consider when evaluating a project for improving or maintaining the quality of the local environment?

Section 86.58 What does the Service consider when evaluating a project for environmental sustainability?

We change §§ 86.57 and 86.58 in the proposed rule to §§ 86.58 and 86.59 in the amended proposed rule. We add a new section after § 86.59 in the amended proposed rule as § 86.60 ''What does the Service consider when evaluating a project for demonstrating a commitment to environmental compliance, sustainability, and stewardship?'' We add this section to reflect the amended criteria in § 86.51(c), and, in §§ 86.58 through 86.60, we discuss how we will consider them. We do this because the majority of comments we received ask us to rethink our approach.

Most commenters said they did not want a criterion that includes improving the local habitat. We focus the criterion at § 86.58 in the amended proposed rule on innovation that directly relates to the BIG-funded project and eligible-user access. We clarify that we will not consider improvements to access that are mandated by law, but only voluntary actions that the grantee or subgrantee does beyond the minimum requirements.

We amend the criterion at § 86.59 in the amended proposed rule in response to comments stating it may be difficult to measure global impact or sustainability at the application phase. Although several comments suggested we remove this criterion, we are resolute that we should consider and reward this type of innovation. We considered all comments, and we amend the proposed rule to capture the positive aspects of innovation, while narrowing the focus to actions that directly relate to BIG-eligible construction.

We relate the criterion to physical components, technology, or techniques that are new or repurposed in a unique way. We give examples of the type of effects that the innovation should address, such as extending the useful life, reducing maintenance, reducing operating costs, reducing negative impacts during construction, or reducing the carbon footprint of the BIG-funded project. The applicant should be able to address these items in their application. This change relates the innovation directly back to infrastructure, but encourages applicants to be forward thinking while planning and executing the project.

We add the criterion at § 86.60 in the amended proposed rule to allow us to award one point to facilities where a BIG-funded project is proposed that demonstrates it has received official recognition by an organization for its efforts to operate the facility using a high standard of excellence. The awarding organization may be a Federal, State, or local agency, a private or nonprofit organization with focus or expertise in marina operations, or other entity known for working with marinas or boating facilities and supporting innovation, environmental stewardship, sustainability, and best management practices. The recognition the marina receives must be part of an established program with set standards of excellence. The applicant must include proof they have received this recognition.

Section 86.59 What happens after the Director approves projects for funding?

No comments. We renumber this section as § 86.61 to reflect the changes earlier in this subpart.

Subpart F—Grant Administration

Section 86.70 What standards must I follow when constructing a BIG-funded facility?

We received comments that requiring a licensed engineer or architect would be a burden for small marinas, excessive for small projects, and add unnecessary costs to the BIG-funded project. We agree, and, in response, we amend this section to remove the requirement for all projects to meet this standard. We will leave it up to our Regional Offices to ask you to have an expert review your project if the cost is greater than $100,000 and there are concerns.

Section 86.71 How much time do I have to complete the work funded by a BIG grant?

We received comments that suggest 3 years might not be enough time to complete a BIG-funded project and would create a system of continual extension requests. We amend this section to emphasize that we have 3 Federal fiscal years from the beginning of the Federal fiscal award year to obligate funds. For example, for Federal fiscal year 2014, which starts on October 1, 2013, we have until September 30, 2016, to obligate the funding. Grantees may coordinate with us during this period to work on preconstruction planning and compliance. Once the Service and the grantee agree on a start date, we will obligate the funds in our electronic financial system. Grantees will have 3 years from the start date to complete the BIG-funded project. We do not change this section based on this clarification.

Section 86.72 What if I cannot complete the project during the grant period?

We received a comment supporting the clear deadlines and reasonable approach.

Comment 46: Due to the extra work needed to amend a grant, we recommend you change this section from having two 1-year extensions to one 2-year extension.

Response 46: We agree with the concept and amend this section to allow us to grant a first extension for up to 2 years. We may grant a shorter extension

if it is in the best interest of the project or program. We keep the option for a second extension and keep the criteria, but do not give a set time. This approach also allows flexibility for the needs and benefits of the project and the program. We amend the section to require approval from the Regional Director and the Service's Assistant Director for Wildlife and Sport Fish Restoration only for extensions beyond 5 years of the start date. In practice, if a grantee is asking for an extension beyond 5 years, it is possible that more than 8 years have passed from the date of the award. Extending grant funds for a project that you do not complete 8 years after we award a grant requires a higher level review.

Comment 47: This section conflicts with § 86.47 ''What changes can I make in a grant application?'' since modifications could affect the score.

Response 47: This section does not conflict with § 86.47 because § 86.47 refers to changes in an application, not changes in an awarded grant. Time extensions have no impact on the score. We do not make any changes based on this comment.

Section 86.73 What if I need more funds to finish a project?

We received several comments supporting this section. We make some edits to text based on suggestions we received. We amend this section to reflect changes we make to subpart H of the proposed rule.

Section 86.74 How long must I operate and maintain a BIG-funded facility, and who is responsible for the cost of facility operation and maintenance?

We received several comments supporting this section. We received one comment suggesting that because of State-by-State insurance issues we should remove the suggestion for States to insure a BIG-funded project. We remove that suggestion in this section with the understanding that States know it is an option. We maintain the option in § 86.18(f) for States to require subgrantees to have insurance.

Section 86.75 How do I determine the useful life of a project?

We received several suggestions for changing the language in this section; some we accept, and others we do not. We also amend this section based on our consideration and changes to other sections. We will reject your application if you do not propose a useful life in your application. We will allow the grantee to negotiate the proposed useful life with us after we receive the application, but before we approve the grant. We do this so that an application is not rejected based solely on a proposed useful life that we do not agree with at the time we are reviewing applications for awards. However, if you are using an increased useful life to justify more points following the criterion in § 86.51(c), you must give adequate information in your application to support your request for consideration under the criterion. If we find before we approve your grant that you are not able to demonstrate a reasonably expected increased benefit to earn the extra points, we will remove those points from the scoring and adjust awards accordingly. We allow a BIG-funded project to have several useful-life components or to have a single useful life based on the longest useful life of any structure or system in the grant.

Section 86.76 How should I credit the BIG program?

Comment 48: You should add a paragraph to give States the option of having alternative language approved due to local ordinances and restrictions.

Response 48: We agree and amend this section to allow approval of alternative language.

Section 86.77 How can I use the logo for the BIG program?

No comments. We amend this section to add a new paragraph (c) stating that businesses that contribute to or receive from the Trust Fund may display the logo in conjunction with products or projects.

Section 86.78 How must I treat program income?

We received a comment that the table was too complicated. We remove the table and amend this section to clarify that it only applies if you expect to earn program income during the grant period. We simplify § 86.78(d) to recommend that States work with us to reduce unintended program income, but leave the method up to our Regional Offices.

Section 86.79 How must I treat program income earned after the grant period?

No comments.

Subpart G—Facility Operations and Maintenance

Section 86.90 How much must an operator of a BIG-funded facility charge for using the facility?

Comment 49: The proposed rule states that an operator ''must'' charge a reasonable fee based on the prevailing rate in the area. It does not allow an operator to offer free services.

Response 49: We agree and add a new § 86.90(b) to the amended proposed rule to allow BIG-funded operators to offer services free of charge if that is prevailing practice for the area.

Comment 50: The regulations should not involve themselves in the business practices of the marina owner and should not require this information.

Response 50: We reiterate our comments found in the preamble of the proposed rule that grantees must not use the benefit of the Federal grant to compete unfairly with similar businesses in the area of the BIG-funded project. We amend the proposed rule by adding § 86.90(c) to allow for a legally imposed fee structure. We move § 86.90(b) to (d) and amend it to require you to state the fees and the basis for the fees in your grant application. We remove the statement that awarding a grant includes approval of proposed fees, as everything in the application becomes part of the grant award and this is unnecessary information.

Comment 51: There is no place in the proposed rule that tells a grantee what to include in a grant application for fees.

Response 51: We describe what supports this requirement in the new § 86.90(d). You must present the basis for your conclusion in any format that shows the fees comply with the prevailing rate.

Section 86.91 May an operator of a BIG-funded facility increase or decrease user fees during the useful life of the BIG-funded project?

Comment 52: The State should authorize any change in user fees.

Response 52: We amend § 86.91 to designate the sole paragraph in the proposed rule as paragraph (a) in the amended proposed rule. We remove the requirement that we approve a change in user fees, but we allow States to be more involved if they choose. We add § 86.91(b) to address how a State or the Service must respond if it discovers an operator of a BIG-funded facility is charging an unreasonable fee. We will not monitor changes in user fees. This paragraph states that the State and the Service must allow an operator to make reasonable business decisions when changing user fees.

Section 86.92 May an operator of a BIG-funded facility limit public access?

We amend the question in the amended proposed rule to address allowing access rather than limiting access. We received comments that led us to amend this section to add a new § 86.92(a) to clarify the definition of

''public access.'' Public access means access by eligible users for eligible actions or other actions that either support or do not interfere with the purposes of the BIG-funded project. We add this definition to emphasize that ''public access'' does not mean that an operator of a BIG-funded facility should ignore the purpose of the BIG-funded project and allow access that interferes with that purpose. We remove the sentence in § 86.92(a) that allowed applicants to describe other limits to access in their application. We amend § 86.92(b) to state that an operator must allow public access to the BIG-funded facility. We amend § 86.92(c) to state that an operator must allow reasonable public access to other parts of the facility that would normally be open to the public. An operator of a BIG-funded facility must not limit access to only a certain segment of the eligible public, such as members only, or discriminate against an eligible user in a way that interferes with his or her civil rights. We move § 86.92(b) to (d). We replace the language at § 86.92(c) for the reasons in Response 53. We move § 86.92(d) and (e) to § 86.92 (e) and (f), respectively.

Comment 53: Section 86.92(c) says that the public must have access to the shore and related facility features such as fuel stations and restrooms. The public does not have direct access to the shore if the BIG-funded project is for mooring buoys. The regulations should have an exception for this requirement.

Response 53: We understand the language in the proposed rule may be misinterpreted to require an operator of a BIG-funded facility to provide transportation to and from BIG-funded projects or components that are located away from the shore. We amend the proposed rule to state that an operator must allow reasonable public access that would normally be open to the public. This change states that eligible users must have normal access, but that the operator does not have to create access where it does not exist.

Section 86.93 May I prohibit overnight use by eligible vessels at a BIG-funded facility?

Comment 54: At the end of the sentence, add ''or if authorized by the State agency.''

Response 54: We disagree. We indicate that you must state in your application if you intend your BIG-funded facility to be for day use only, as it is part of the scope of the project. We do not want a grantee or subgrantee changing any part of the scope without going through the revision process, so we do not allow the State to approve a change in scope. We amend this section to require a grantee to follow subpart H for changes in scope.

Section 86.94 Do I have to include informational signs for eligible users at BIG-funded facilities?

Based on comments received, consideration of new technologies, and changes to this amended proposed rule, we amend this section to expand the technology and methods used to inform boaters so grantees may use signs or any other form of reasonable communication. This change allows grantees to inform boaters through their smart phone, internet, or any other communication technology commonly available. Because of these changes, we also amend the section title. We remove the requirement to post fees. We remove the need to post restrictions for shared-use areas that have had costs allocated as described at § 86.19. We emphasize that an operator must inform the public of BIG-funded benefits that are solely for the use of eligible users. For example, you may estimate the breakdown of users of a BIG-funded fuel dock to be 70 percent ineligible users and 30 percent eligible users. If you allocate costs in the application, then you are not required to notify any users of any restrictions. However, if you build 10 BIG-funded slips for eligible users and they are located next to 20 slips that are available for anyone to use, you must use signs or other methods to inform the public that the 10 slips are only for eligible vessels.

Subpart H—Revisions and Appeals

Section 86.100 Can I change the information in an application after I receive a grant?

We amend § 86.100(d) to state that the Regional Office should follow its own procedures for review and approval of changes to a BIG Standard grant. We add § 86.100(e) to state that the Regional Office must receive approval from the Division of Wildlife and Sport Fish Restoration Headquarters Office for any changes to a BIG Select grant that involves cost, project benefits, or another factor that could affect the score.

Comment 55: This section includes BIG Standard grants, but talks about national scoring, which does not apply to BIG Standard.

Response 55: We agree and amend the section to separate rules that apply to both BIG Standard and BIG Select and those that apply only to BIG Select.

Section 86.101 How do I ask for a revision of a grant?

No comments.

Section 86.102 Can I appeal a decision?

No comments.

Section 86.103 Can the Director authorize an exception to this part?

No comments.

Subpart I—Information Collection

Section 86.110 What are the information-collection requirements of this part?

We add § 86.110(a)(3) and (4) on Standard Forms 424 A, 424 C, SF–LLL, and SF–LLLA.

Public Comments

You may submit your comments and materials on this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

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 information from public view, we cannot guarantee that we will be able to do so.

Required Determinations

We do not change. Refer to our proposed rule, Boating Infrastructure Grant Program, (77 FR 18767, March 28, 2012), for Required Determinations.

List of Subjects in 50 CFR Part 86

Administrative practice and procedure, Boats and boating safety, Fishing, Grants administration, Grant programs, Harbors, Intermodal transportation, Marine resources, Natural resources, Navigation (water), Recreation and recreation areas, Reporting and recordkeeping requirements, Rivers, Signs and symbols, Vessels, Water resources, Waterways.

Proposed Regulation Promulgation

For the reasons discussed in the preamble, we propose to amend title 50 of the Code of Federal Regulations, chapter I, subchapter F, by revising part 86 to read as follows:

PART 86—BOATING INFRASTRUCTURE GRANT PROGRAM

Subpart A—General

Sec.
86.1 What does this part do?
86.2 What is the purpose of BIG?
86.3 What terms do I need to know?

Subpart B—Program Eligibility

86.10 Who may apply for a BIG grant?
86.11 What actions are eligible for funding?
86.12 What types of construction and services does boating infrastructure include?
86.13 What operational and design features must a facility have where a BIG-funded facility is located?
86.14 How can I receive BIG funds for facility maintenance?
86.15 How can dredging qualify as an eligible action?
86.16 What actions are ineligible for BIG funding?
86.17 Who must own the site of a BIG-funded facility?
86.18 How can I ensure that a BIG-funded facility continues to serve its intended purpose for its useful life?
86.19 What if a BIG-funded facility would benefit both eligible and ineligible users?

Subpart C—Federal Funds and Match

86.30 What is the source of BIG funds?
86.31 How does the Service know how much money will be available for BIG grants each year?
86.32 What are the match requirements?
86.33 What information must I give on match commitments, and where do I give it?
86.34 What if a partner is not willing or able to follow through on a match commitment?

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86.40 What are the differences between BIG Standard grants and BIG Select grants?
86.41 How do I apply for a grant?
86.42 What do I have to include in a grant application?
86.43 What information must I put in the project statement?
86.44 What if I need more than the maximum Federal share and required match to complete my BIG-funded project?
86.45 If the Service does not select my grant application for funding, can I apply for the same project the following year?
86.46 What changes can I make in a grant application after I submit it?

Subpart E—Project Selection

86.50 Who ranks BIG Select grant applications?
86.51 What criteria does the Service use to evaluate BIG Select applications?
86.52 What does the Service consider when evaluating a project on the need for more or improved boating infrastructure?
86.53 What factors does the Service consider for benefits to eligible users that justify the cost?
86.54 What does the Service consider when evaluating a project on boater access to significant destinations and services that support transient boater travel?
86.55 What does the Service consider as a partner for the purposes of these ranking criteria?
86.56 What does the Service consider when evaluating a project that includes more than the minimum match?
86.57 What does the Service consider when evaluating in-kind contributions that a partner brings to a project?
86.58 What does the Service consider when evaluating a project for a physical component, technology, or technique that will improve eligible user access?
86.59 What does the Service consider when evaluating a project for innovative physical components, technology, or techniques that improve the BIG project?
86.60 What does the Service consider when evaluating a project for demonstrating a commitment to environmental compliance, sustainability, and stewardship?
86.61 What happens after the Director approves projects for funding?

Subpart F—Grant Administration

86.70 What standards must I follow when constructing a BIG-funded facility?
86.71 How much time do I have to complete the work funded by a BIG grant?
86.72 What if I cannot complete the project during the grant period?
86.73 What if I need more funds to finish a project?
86.74 How long must I operate and maintain a BIG-funded facility, and who is responsible for the cost of facility operation and maintenance?
86.75 How do I determine the useful life of a BIG-funded facility?
86.76 How should I credit the BIG program?
86.77 How can I use the logo for the BIG program?
86.78 How must I treat program income?
86.79 How must I treat income earned after the grant period?

Subpart G—Facility Operations and Maintenance

86.90 How much must an operator of a BIG-funded facility charge for using the facility?
86.91 May an operator of a BIG-funded facility increase or decrease user fees during its useful life?
86.92 Must an operator of a BIG-funded facility allow public access?
86.93 May I prohibit overnight use by eligible vessels at a BIG-funded facility?
86.94 Must I give information to eligible users and the public about BIG-funded facilities?

Subpart H—Revisions and Appeals

86.100 Can I change the information in a grant application after I receive a grant?
86.101 How do I ask for a revision of a grant?
86.102 Can I appeal a decision?
86.103 Can the Director authorize an exception to this part?

Subpart I—Information Collection

86.110 What are the information-collection requirements of this part?

Authority: 16 U.S.C. 777c, g, and g–1.

Subpart A—General

§ 86.1 What does this part do?

(a) This part tells States how they may apply for and receive grants from the Boating Infrastructure Grant program (BIG) Standard and Select subprograms. Section § 86.40 describes the differences between these two subprograms.

(b) The terms *you, your,* and *I* refer to a State agency that applies for or receives a BIG grant. *You* may also apply to a subgrantee with which a State agency has a formal agreement to construct, operate, or maintain a BIG-funded facility.

(c) The terms *we, us,* and *our* refer to the U.S. Fish and Wildlife Service.

§ 86.2 What is the purpose of BIG?

The purpose of BIG is to construct, renovate, and maintain boating infrastructure facilities for transient recreational vessels at least 26 feet long.

§ 86.3 What terms do I need to know?

For the purposes of this part, we define these terms:

BIG-funded facility means only the part of a facility that we fund through a BIG grant.

Boating infrastructure means all of the structures, equipment, accessories, and services that are necessary or desirable for a facility to accommodate eligible vessels. See § 86.12 for examples of boating infrastructure.

Capital improvement means:

(1) A new structure that costs at least $25,000 to build; or

(2) Altering, renovating, or repairing an existing structure if it increases the structure's useful life by 10 years or if it costs at least $25,000.

Construction means the act of building or significantly altering, renovating, or repairing a structure. Clearing and reshaping land and demolishing structures are types or phases of construction. Examples of structures are buildings, docks, piers, breakwaters, and slips.

Contractor means an entity with which a State has a written agreement to operate or manage a BIG-funded facility. You pay a contractor to perform specific duties according to a written agreement. Contractors are not grant recipients.

Director means:

(1) The person whom the Secretary of the Interior:

(i) Appointed as the chief executive official of the U.S. Fish and Wildlife Service; and

(ii) Delegated authority to administer BIG nationally; or

(2) A deputy or another person who exercises the Director's Servicewide authority.

Eligible user means an operator or passenger of an eligible vessel.

Eligible vessel means a transient recreational vessel at least 26 feet long. The term includes vessels that are owned, loaned, rented, or chartered. The term does not include:

(1) Commercial vessels;

(2) Vessels that dock or operate permanently from the BIG-funded facility; or (3) Vessels that receive payment to routinely transport passengers on a prescribed route, such as cruise ships, dive boats, and ferries.

Facility means the structures, equipment, and operations that:

(1) Provide services to boaters at one location; and

(2) Are under the control of a single operator or business identified in the grant application.

Grant means an award of money, the principal purpose of which is to transfer funds from a Federal agency to a grantee to support or stimulate an authorized public purpose and includes the matching cash and any matching in-kind contributions.

Maintenance means keeping structures or equipment in a condition to serve the intended purpose. It includes cyclical or occasional actions done to keep facilities fully functional. It does not include operational actions such as janitorial work. Examples of maintenance actions are:

(1) Lubricating mechanical components of BIG-funded equipment;

(2) Replacing minor components of a BIG-funded improvement, such as bolts, boards, and individual structural components; and

(3) Painting, pressure washing, and repointing masonry.

Marketing means an activity that promotes a business to interested customers for the financial benefit of the facility. It may include a plan for sales techniques and strategies, business communication, and business development. A business uses marketing to find, satisfy, and keep a customer.

Match means the value of any cash or in-kind contributions required or volunteered to complete the BIG-funded facility that are not borne by the Federal Government, unless a Federal statute authorizes such match.

Navigable waters means waters that are deep and wide enough for the passage of eligible vessels.

Operation means actions that allow a BIG-funded facility or parts of a BIG-funded facility to perform their function on a daily or frequent basis. Examples of operation are janitorial work, service labor, facility administration, utilities, rent, taxes, and insurance. *Personal property* means anything tangible or intangible that is not real property.

Program income means gross income received by the grantee or subgrantee directly generated by a grant-supported activity, or earned only as a result of the grant during the grant period.

Project means one or more related actions that are eligible for BIG funding, achieve specific goals and objectives of BIG, and in the case of construction, occur at only one facility.

Project cost means the Federal share awarded through the BIG grant and all non-Federal funds given as the match or added to the Federal and matching shares to complete the BIG-funded project.

Public communication means communicating with the public or news media about specific actions or accomplishments directly associated with the BIG-funded project. The purpose is to inform the public about the BIG program or projects that receive BIG funding.

Real property means one, several, or all interests, benefits, and rights inherent in owning a parcel of land. A parcel includes anything physically and firmly attached to it by a natural or human action. Examples of real property in this rule include fee and leasehold interests, easements, fixed docks, piers, permanent breakwaters, buildings, utilities, and fences.

Regional Office means the main administrative office of one of the Service's geographic Regions in which a BIG-funded project is located. Each Regional Office has a:

(1) *Regional Director* appointed by the Director to be the chief executive official of the Region and authorized to administer Service activities in the Region, except for those handled directly by the Service's Headquarters Office; and

(2) *Division of Wildlife and Sport Fish Restoration (WSFR)* or its equivalent that administers BIG grants.

Renovate means to rehabilitate all or part of a facility to restore it to its intended purpose or to expand its purpose to allow use by eligible vessels or eligible users.

Scope of a project means the purpose, objectives, approach, and results or benefits expected, including the useful life of any capital improvement.

Service means the U.S. Fish and Wildlife Service.

State means any State of the United States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa.

Transient means travel to a single facility for day use or up to 10 days.

Useful life means the period during which a BIG-funded capital improvement is capable of fulfilling its intended purpose with adequate routine care and maintenance. See §§ 86.74 and 86.75.

Subpart B—Program Eligibility

§ 86.10 Who may apply for a BIG grant?

One agency in each eligible State may apply for a BIG grant if authorized to do so by:

(a) A statute or regulation of the eligible jurisdiction;

(b) The Governor of the State, Commonwealth, or territory; or

(c) The Mayor of the District of Columbia.

§ 86.11 What actions are eligible for funding?

(a) The following actions are eligible for BIG funding if they are for eligible users or eligible vessels:

(1) Construct, renovate, or maintain publicly or privately owned boating infrastructure (see § 86.12) following the requirements at § 86.13.

(2) Conduct actions necessary to construct boating infrastructure, such as:

(i) Engineering, economic, environmental, or feasibility studies or assessments; and

(ii) Planning, permitting, and contracting.

(3) Dredging a channel, boat basin, or other boat passage following the requirements at § 86.15.

(4) Install navigational aids to give transient vessels safe passage between a facility and navigable channels or open water.

(5) Produce information and education materials specific to BIG or a BIG-funded project and that credit BIG as a source of funding when appropriate. Examples of eligible actions include:

(i) Locating BIG-funded facilities on charts and cruising guides;

(ii) Creating Statewide or regional brochures telling boaters about BIG and directing them to BIG-funded facilities;

(iii) Advertising a BIG-funded facility in print or electronic media with the emphasis on BIG, the BIG-funded facility, or services for eligible users, and not on marketing the marina as a whole;

(iv) Marina newsletter articles, marina or agency Web pages, and other

communications you produce that are directly related to the BIG-funded project;

(v) Giving boaters information and resources to help them find and use the BIG-funded facility; and

(vi) Public communication.

(6) Use BIG Standard grant awards to administer BIG Standard and BIG Select grants, or grant programs, Statewide. This includes coordinating and monitoring to ensure BIG-funded facilities are well-constructed, meet project objectives, and serve the intended purpose for their useful life; and to manage BIG grant performance or accomplishments.

(b) An applicant may ask for approval for preaward costs for eligible actions. Your Regional Office must approve preaward costs. You incur preaward costs at your own risk, as we will only reimburse you if you receive a grant.

(c) A State may require a pumpout be funded through the Clean Vessel Act Grant Program (CVA), Catalog of Federal Domestic Assistance number 15.616. We urge applicants to seek funding for installing pumpout facilities through CVA before including the cost as part of a BIG grant application.

(d) Other actions may qualify for BIG funding, subject to our approval, if they achieve the purposes of BIG. We will describe actions we approve and how they are eligible for BIG funding in the annual Request for Applications (RFA).

§ 86.12 What types of construction and services does boating infrastructure include?

Boating infrastructure may include:

(a) Boat slips, piers, mooring buoys, floating docks, dinghy docks, day docks, and other structures for boats to tie-up and gain access to the shore or services.

(b) Fuel stations, restrooms, showers, utilities, and other amenities for transient-boater convenience.

(c) Lighting, communications, buoys, beacons, signals, markers, signs, and other means to support safe boating and provide information to aid boaters.

(d) Breakwaters, sea walls, and other physical improvements to allow an area to offer a harbor of safe refuge. A *harbor of safe refuge* is an area that gives eligible vessels protection from storms. To be a harbor of safe refuge, the facility must offer a place to secure eligible vessels and provide access to provisions and communication for eligible users.

(e) Equipment and structures for collecting, disposing, or recycling liquid or solid waste from eligible vessels.

§ 86.13 What operational and design features must a facility have where a BIG-funded facility is located?

(a) At project completion, a facility where a BIG-funded facility is located must:

(1) Be open to eligible users and operated and maintained for its intended purpose for its useful life;

(2) Clearly designate eligible uses and inform the public of restrictions;

(3) Offer security, safety, and service for eligible users and vessels;

(4) Be accessible by eligible vessels on navigable waters;

(5) Allow public access as described at § 86.92;

(6) Have docking or mooring sites with water access at least 6 feet deep at the lowest tide or fluctuation, unless following paragraph (c) of this section; and

(7) Have an operational pumpout station if:

(i) Eligible vessels stay overnight; and

(ii) Available pumpout service is not located within 2 nautical miles; or

(iii) State or local laws require one on site.

(b) We will waive the pumpout requirement if you demonstrate in the grant application the inability to install a pumpout, following the requirements at § 86.43(n).

(c) We will allow water access at a depth less than 6 feet if the State can demonstrate the BIG-funded facility will accommodate eligible users for the intended BIG purpose at that location.

(d) Any of these design features may already be part of the facility, or be funded through another source, and need not be included as part of the BIG project.

§ 86.14 How can I receive BIG funds for facility maintenance?

(a) For BIG Standard and BIG Select grants:

(1) You may request BIG funds for facility maintenance only if the maintenance action does not extend past the grant period.

(2) You may apply user fees collected at the BIG-funded facility after the grant period to maintain the facility.

(b) For BIG Standard grants:

(1) You may request BIG funds for one-time or as-needed maintenance costs at any BIG-eligible facility as long as the costs are discrete and follow paragraph (a) of this section.

(2) If you use BIG funds for maintenance at a facility that has received a BIG grant in the past, you must extend the useful life of each capital improvement accordingly.

(3) States may limit or exclude BIG-maintenance funding they make available to subgrantees.

(c) For BIG Select grants, you may request BIG funds for maintenance directly related to the BIG project and that benefit eligible users. You are responsible for all maintenance costs after the grant period except as provided in paragraph (b) of this section.

§ 86.15 How can dredging qualify as an eligible action?

(a) Dredging in this part includes the physical action of removing sediment from the basin and any associated actions, such as engineering, permitting, dredge material management, and other actions or costs that occur because of the dredging. Dredging can qualify as an eligible action under the grant only if the costs for the dredging-related actions do not exceed 10 percent of total BIG project costs, or $200,000, whichever is less.

(b) When you complete the project, the BIG-funded dredged area must:

(1) Have navigable water at least 6 feet deep at lowest tide or fluctuation;

(2) Allow safe, accessible navigation by eligible vessels to, from, and within the BIG-funded facility; and

(3) Allow eligible vessels to dock safely and securely at transient slips.

(c) You must show in the grant application that:

(1) Dredging is needed to fulfill the purpose and objectives of the proposed project; and

(2) You have allocated the dredging costs between the expected use by eligible vessels and ineligible vessels.

(d) You must certify in the grant application that you have enough resources to maintain the dredged area at the approved width and depth for the useful life of the BIG-funded facility.

§ 86.16 What actions are ineligible for BIG funding?

(a) These actions or costs are ineligible for BIG funding:

(1) Law enforcement.

(2) Direct administration and operation of the facility, such as salaries, utilities, and routine janitorial duties.

(3) Developing a State plan to construct, renovate, or maintain boating infrastructure.

(4) Acquiring land or any interest in land.

(5) Constructing, renovating, or maintaining roads or parking lots.

(6) Constructing, renovating, or maintaining boating infrastructure facilities for:

(i) Shops, stores, food service, other retail businesses, or lodging;

(ii) Facility administration or management, such as a harbormaster's or dockmaster's office; or

(iii) Transportation, storage, or services for boats on dry land, such as dry docks, haul-outs, and boat maintenance and repair shops.

(7) Purchasing or operating service boats to transport boaters to and from mooring areas.

(8) Marketing. Examples of ineligible marketing actions include:

(i) Giveaway items promoting the business or agency;

(ii) General marina or agency newsletters or Web sites promoting the marina or agency;

(iii) Exhibits at trade shows promoting anything other than the BIG-funded facility; and

(iv) Outreach efforts directed at the marina as a business or the agency as a whole and not focused on BIG or the BIG-funded facility.

(9) Constructing, renovating, or maintaining boating infrastructure that does not:

(i) Include design features as described at § 86.13;

(ii) Serve eligible vessels or users; and

(iii) Allow public access as described at § 86.92.

(10) Purchase of supplies and other expendable personal property not directly related to achieving the project objectives.

(b) Other activities may be ineligible for BIG funding if they are inconsistent with the:

(1) Purpose of BIG; or

(2) Applicable Cost Principles at 2 CFR Parts 225 or 230.

§ 86.17 Who must own the site of a BIG-funded facility?

(a) You or another entity approved by us must own or have a legal right to operate the site of a BIG-funded facility. If you are not the owner, you must be able to show, before we approve your grant, that your contractual arrangements with the owner of the site will ensure that the owner will use the BIG-funded facility for its authorized purpose for its useful life.

(b) Subgrantees or contractors may be a local or tribal government, a nonprofit organization, or a commercial enterprise.

(c) Subgrantees that are commercial enterprises are subject to:

(1) 43 CFR Part 12, subpart F for grant administrative requirements; and

(2) Any future regulations that supplement or replace that subpart.

§ 86.18 How can I ensure that a BIG-funded facility continues to serve its intended purpose for its useful life?

(a) When you design and build your BIG-funded facility, you must consider the features, location, materials, and technology in reference to the geological, geographic, and climatic factors that may have an impact on its useful life.

(b) You must record the Federal interest in real property that includes a BIG-funded capital improvement according to the assurances required in the grant application and guidance from the Regional WSFR Office.

(c) If we direct you to do so, you must require that subgrantees record the Federal interest in real property that includes a BIG-funded capital improvement.

(d) If we do not direct you to act as required by paragraph (c) of this section, States may require subgrantees to record the Federal interest in real property that includes a BIG-funded capital improvement.

(e) You must include in your contract with subgrantees that they must not alter the ownership, purpose, or use of the BIG-funded facility as described in the project statement without approval from you and the WSFR Regional Office.

(f) You may impose other requirements on subgrantees, as allowed by law, to reduce State liability for the BIG-funded facility. Examples are insurance, deed restrictions, and a security interest agreement, which uses subgrantee assets to secure performance under the grant.

§ 86.19 What if a BIG-funded facility would benefit both eligible and ineligible users?

You must not assign any share of the costs to the BIG grant if the BIG-funded facility or a discrete element of the BIG-funded facility does not benefit eligible users. A discrete element has a distinct purpose, such as a fuel station, pumpout facility, breakwater, or dock system.

(a) You must clearly show and explain in the project statement:

(1) The anticipated benefits of each project, discrete elements, and applicable components;

(2) The breakdown of costs, including the basis or method you use to allocate costs between eligible and ineligible users; and

(3) Your reasoning in determining when to allocate costs, based on paragraphs (a) through (e) of this section and any other guidance given in the annual RFA.

(b) You may assign 100 percent of the project costs to the BIG grant if the project and each discrete element of the project benefit only eligible users.

(c) If a proposed project or a discrete element of a project would benefit both eligible and ineligible users, before the Director announces your award, you must allocate costs between eligible and ineligible users based on the expected use.

(d) If a proposed BIG-funded facility, or a discrete element, minor component, or single action of the BIG-funded project, gives a secondary or minimal benefit to all users, we will not require you to allocate costs between eligible and ineligible users for that benefit. Examples for how we will apply this rule are the following:

(1) The primary purpose is directly for the benefit of eligible users, with a secondary benefit for all users. You must clearly state the exclusive benefit to eligible users in your application. The secondary benefit cannot exclude eligible users from the primary purpose. For example, if you construct a dock system for exclusive use by eligible vessels and a secondary benefit of the dock system is protection of the marina from wave action, you would not have to allocate costs for the secondary benefit. However, the secondary benefit cannot be docking for ineligible vessels because it would exclude eligible users from the primary purpose.

(2) The secondary benefit to ineligible users is not the primary purpose, is minimal, and you do not add special features to accommodate ineligible users. For example, you do not have to allocate costs between user groups for a gangway from the transient dock, designed exclusively for eligible users, even though it is accessible to the general public. However, if you construct the gangway to accommodate the expected ineligible users, then you must allocate costs between user groups.

(3) The expected benefits to both eligible and ineligible users have minimal value. If the component has a value of .0025 percent or less than the maximum available Federal award plus required match, you do not have to allocate costs for that component. We will post the amount of the minimal value each year in the annual RFA. For example, if the total maximum Federal award and required match for a BIG Select project is $2 million, you do not have to allocate costs between user groups for any discrete project element, component, or action with a value of $5,000 or less.

(e) Examples of actions for which you must allocate costs between user groups are the following, unless paragraph (b) of this section applies:

(1) You propose a 200-foot dock for eligible user tie-up spaces that you attach to the shore at a boat launch. It will attract ineligible use as a tie-up for boaters as they enter and exit the water. You must allocate costs between the expected eligible and ineligible use.

(2) You propose a breakwater, fuel station, pumpout station, restroom,

dredging, navigational aids, or other multiuse or multipurpose action.

(f) Examples of actions for which you do not need to allocate costs between user groups are:

(1) You propose to construct, renovate, or maintain docks specifically for eligible vessels.

(2) You propose to produce information and educational materials specific to BIG.

(g) You must clearly inform boaters when access by ineligible users is limited or restricted following the guidance at § 86.94.

(h) We may ask you to clarify or change how you allocate costs in your grant application if they do not meet our standards. We may reject costs or applications that do not allocate costs between eligible and ineligible users according to the requirements of this section and the RFA.

Subpart C—Federal Funds and Match

§ 86.30 What is the source of BIG funds?

(a) BIG receives Federal funding as a percentage of the annual revenues to the Sport Fish Restoration and Boating Trust Fund (Trust Fund) [26 U.S.C. 4161(a), 4162, 9503(c), and 9504].

(b) The Trust Fund receives revenue from sources including:

(1) Excise taxes paid by manufacturers on sportfishing equipment and electric outboard motors;

(2) Fuel taxes attributable to motorboats and nonbusiness use of small-engine power equipment; and

(3) Import duties on fishing tackle, yachts, and pleasure craft.

§ 86.31 How does the Service know how much money will be available for BIG grants each year?

(a) We estimate funds available for BIG grants each year when we issue a RFA at *http://www.grants.gov.* We base this estimate on the revenue projected for the Trust Fund.

(b) We calculate the actual amount of funds available for BIG grants based on tax collections, any funds carried over from previous fiscal years, and available unobligated BIG funds.

§ 86.32 What are the match requirements?

(a) The Act requires that the State or another non-Federal partner must pay at least 25 percent of eligible and allowable BIG-funded facility costs. We must waive the first $200,000 of the required match for each grant to the Commonwealth of the Northern Mariana Islands and the territories of American Samoa, Guam, and the U.S. Virgin Islands (48 U.S.C. 1469(a)).

(b) Match may be cash contributed during the funding period or in-kind contributions of personal property, structures, and services including volunteer labor, contributed during the grant period.

(c) Match must be:

(1) Necessary and reasonable to achieve project objectives;

(2) An eligible activity or cost;

(3) From a non-Federal source, unless you show that a Federal statute authorizes the specific Federal source for use as match; and

(4) Consistent with the applicable sections of:

(i) Uniform Administrative Requirements for Grants and Agreements at 43 CFR 12.64 and 12.923;

(ii) Applicable Cost Principles at 2 CFR Parts 220, 225, or 230; and

(iii) Any regulations or policies that may replace or supplement requirements at paragraphs (c)(4)(i) and (ii) of this section.

(d) Match must not include:

(1) An interest in land or water;

(2) The value of any structure completed before the beginning of the funding period, unless the Service approves the activity as a preaward cost;

(3) Costs or in-kind contributions that have been or will be counted as satisfying the cost-sharing or match requirement of another Federal grant, a Federal cooperative agreement, or a Federal contract, unless authorized by Federal statute; or

(4) Any funds received from another Federal source, unless authorized by Federal statute.

§ 86.33 What information must I give on match commitments, and where do I give it?

(a) You must give information on the amount and the source of match for your proposed BIG-funded facility on the standard grant application form at *http://www.grants.gov.*

(b) You must also give information on the match commitment by the State, a subgrantee, or other third party in the project statement under ''Match and Other Contributions.''

(c) In giving the information required at paragraph (b) of this section, you must:

(1) State the amount of matching cash;

(2) Describe any matching in-kind contributions;

(3) State the estimated value of any in-kind contributions; and

(4) Explain the basis of the estimated value.

§ 86.34 What if a partner is not willing or able to follow through on a match commitment?

(a) You are responsible for all activity and funding commitments in the grant application. If you discover that a partner is not willing or able to meet a grant commitment, you must notify us that you will either:

(1) Replace the original partner with another partner who will provide the action or the funds to fulfill the commitment as stated in the grant application; or

(2) Give either cash or an in-kind contribution(s) that at least equals the value and achieves the same objective as the partner's original commitment of cash or in-kind contribution.

(b) If a partner is not willing or able to meet a match commitment and you do not have enough money to complete the BIG-funded facility as proposed, you must follow the requirements at §§ 86.73 and 86.100.

Subpart D—Application for a Grant

§ 86.40 What are the differences between BIG Standard grants and BIG Select grants?

COMPARISON OF BIG STANDARD AND SELECT GRANTS

	BIG Standard	BIG Select
(a) What actions are eligible for funding?.	Those listed at § 86.11.	Those listed at § 86.11 except § 86.11(a)(6).
(b) What is the amount of Federal funds I can receive in one BIG grant?.	Each year we make at least $100,000 available to each State. States may request any amount up to the annual funding limit. We decide annual funding limits based on the total funds available for BIG. We announce each year in *http://www.grants.gov* the amount of Federal funds you can receive..	We may limit funding to a maximum award of $1.5 million. We will publish a recommended maximum grant request in the annual RFA.

COMPARISON OF BIG STANDARD AND SELECT GRANTS—Continued

	BIG Standard	BIG Select
(c) How many grant applications can I submit each year?.	Each State may only request up to the annual funding limit each year. You may do this by sending in one grant application with one project or multiple projects. The Regional WSFR Office may ask a State with multiple projects to prepare a separate grant request for each project, as long as the total of all projects does not exceed the annual funding limit..	No limit.
(d) How does the Service choose grant applications for funding?.	We fund a single grant or multiple grants per State up to the maximum annual amount available..	We score each grant application according to ranking criteria at § 86.51. We recommend applications, based on scores and available funding, to the Director. The Director selects the applications for award.

§ 86.41 How do I apply for a grant?

(a) If you want to be a subgrantee, you must send an application to the State agency that manages BIG following the rules given by your State. We award BIG funds only to States.

(b) States must submit a grant application through *http://www.grants.gov,* Catalog of Federal Domestic Assistance (CFDA) 15.622.

(c) The director of your State agency or an authorized representative must certify all standard forms submitted in the grant application process in the format designated by the Service.

(d) If your State supports Executive Order 12372, Intergovernmental Review of Federal Programs, you must send copies of all standard forms and supporting information to the State Clearinghouse or Single Point of Contact before sending it to *http://www.grants.gov.*

§ 86.42 What do I have to include in a grant application?

(a) When you submit a BIG grant application, you must include standard forms, budget information, a BIG project statement, documents, maps, images, and other information asked for in the annual RFA at http://www.grants.gov, CFDA 15.622, in the format we ask for.

(b) After we review your application, any responses to our requests to give more information or to clarify information become part of the application.

(c) After we award your grant, you must include supporting documentation explaining how the proposed work complies with applicable laws and regulations and tell us the permits, evaluations, and reviews you will need to obtain in order to complete the project.

(d) Misrepresentations of the information you give in an application may be a reason for us to:

(1) Reject your application; or

(2) Terminate your grant and require repayment of Federal funds awarded.

§ 86.43 What information must I put in the project statement?

You must put the following information in the project statement:

(a) *Need.* Explain why the project is necessary and how it fulfills the purpose of BIG. To support the need for the project you must:

(1) For construction projects, describe existing facilities available for eligible vessels near the proposed project. Support your description by including images that show existing structures and facilities, the proposed BIG-funded facility, and relevant details, such as the number of transient slips and the amenities for eligible users.

(2) Describe how the proposed project fills a need or offers a benefit not offered by the existing facilities identified at paragraph (a)(1) of this section.

(3) Give information to support the number of transient boats expected to use the area of the proposed project and show that the existing facilities identified at paragraph (a)(1) of this section are not enough to support them.

(b) *Purpose.* State the desired outcome of the project in general or abstract terms, but in such a way that we can review the information and apply it to the competitive review.

(c) *Objectives.* Identify specific, measurable, attainable, relevant, and time-bound outputs that will contribute to the need you are addressing.

(d) *Results or benefits expected.*

(1) Describe each capital improvement, service, or other product that will result from the project, and its purpose.

(2) Describe how the structures, services, or other products will:

(i) Satisfy the need described at paragraph (a) of this section; and

(ii) Benefit eligible users.

(e) *Approach.* (1) Describe the methods used to achieve the objectives. Show that you will use sound design and proper procedures. Include enough information for us to make a preliminary assessment of compliance needs.

(2) Give the name, contact information, qualifications, and role of each known contractor or subgrantee.

(3) Explain how you will exercise control to ensure the BIG-funded facility continues to fulfill its authorized purpose during the useful life of the BIG-funded project.

(f) *Useful life.* State the useful life in years of each capital improvement for the proposed project. Explain how you determined the useful life of each capital improvement. You must reference a generally accepted method used to determine useful life of a capital improvement. See §§ 86.74 and 86.75.

(g) *Geographic location.* (1) State the location using Global Positioning System (GPS) coordinates in the format we ask for in the annual RFA.

(2) State the local jurisdiction (county, town, city, or equivalent), street address, and water body associated with the project.

(3) Include maps in your application, such as:

(i) A small State map that shows the general location of the project;

(ii) A local map that shows the facility location and the nearest community, public road, and navigable water body; and

(iii) Any other map that supports the information in the project statement.

(h) *Project officer.* Applicant enters only the term *Federal Aid Coordinator* under this heading if the Federal Aid Coordinator for a State fish and wildlife agency will be the project officer. If the Federal Aid Coordinator will not be the project officer, applicant provides the name, title, work address, work email, and work telephone number of the person who will be the contact person. The project officer should have a detailed knowledge of the project.

Applicant states whether the project officer has the authority to sign requests for prior approval, project reports, and other communications committing the grantee to a course of action.

(i) *Budget narrative.* Provide costs and other information sufficient to show that the project will have benefits that justify the costs. You must use reasonably available resources to develop accurate cost estimates for your project to insure the successful completion of your BIG-funded facility. You must state how you will allocate costs between eligible and ineligible users following the requirements at § 86.19 and explain the method used to allocate costs equitably between anticipated benefits for eligible and ineligible users. State sources of cash and in-kind values you include in the project budget. Describe any item that has cost limits or requires our approval and estimate its cost or value. Examples are dredging and preaward costs.

(j) *Match and other partner contributions.* See §§ 86.32 and 86.33 for required information.

(k) *Fees and program income, if applicable.* (1) See § 86.90 for the information that you must include on the estimated fees that an operator will charge during the useful life of the BIG-funded facility.

(2) See §§ 86.78 and 86.79 for an explanation of how you may use program income. If you decide that your project is likely to generate program income during the grant period, you must:

(i) Estimate the amount of program income that the project is likely to generate; and

(ii) Indicate how you will apply program income to Federal and non-Federal outlays.

(l) *Relationship with other grants.* Describe the relationship between the BIG-funded facility and other relevant work funded by Federal and non-Federal grants that is planned, expected, or in progress.

(m) *Timeline.* Describe significant milestones in completing the project and any accomplishments to date.

(n) *General.* (1) If you seek a waiver based on § 86.13(b), you must include the request and supporting information in the grant application following the instructions given in the annual RFA.

(i) We will review your request and will grant the waiver if you present circumstances that show:

(A) A hardship due to lack of utilities or other difficult obstacles, such as a BIG-funded facility on an island with no power or a remote location where the equipment cannot be serviced or maintained regularly;

(B) State or local law does not allow septic-waste disposal facilities at the location;

(C) The State is in the process of applying for a CVA grant for the same award year as the BIG grant to install a pumpout station as part of the BIG-funded facility; or

(D) The State has received a CVA grant and will install a pumpout station as part of the BIG-funded facility on or before the time the BIG-funded facility is completed.

(ii) When we waive the pumpout requirement, the BIG-funded facility must inform boaters:

(A) They are required to properly treat or dispose of septic waste; and

(B) Where they can find information that will direct them to other nearby pumpout stations.

(iii) If we deny your request, we will follow the process described in the annual RFA.

(2) If you seek an allowance based on § 86.13(c), you must include supporting information in the grant application.

(3) Include any other description or documents we ask for in the annual RFA or that you need to support your proposed project.

(o) *Ranking Criteria.* In BIG Select applications, you must respond to each of the questions found in the ranking criteria at § 86.51. We publish the questions for these criteria in the annual RFA. In answering each question, you must include the information at §§ 86.52 through 86.60 and any added information we ask for in the annual RFA.

§ 86.44 What if I need more than the maximum Federal share and required match to complete my BIG-funded project?

(a) If you plan a BIG project that you cannot complete with the recommended maximum Federal award and the required match, you may:

(1) Find other sources of funds to complete the project;

(2) Divide your larger project into smaller, distinct, stand-alone projects and apply for more than one BIG grant, either in the same year or in different years. One project cannot depend on the completion of another; or

(3) Combine BIG Standard and BIG Select funding to complete a project at a single location.

(b) If you cannot complete a BIG project with the amount of the Federal award received and the required match, you may:

(1) Find other sources of funds to complete the project; or

(2) Consider if BIG Standard funds are available to help complete the project. This is not a guaranteed option.

(c) For BIG Select grants, we review and rank each application individually, and each must compete with other applications for the same award year.

(d) If you receive a BIG grant for one of your applications, we do not give preference to other applications you submit.

§ 86.45 If the Service does not select my grant application for funding, can I apply for the same project the following year?

If we do not select your BIG grant application for funding, you can apply for the same project the following year or in later years.

§ 86.46 What changes can I make in a grant application after I submit it?

(a) After you submit your grant application, you can add information or change up to the date and time that the applications are due.

(b) After the due date of the applications and before we announce successful applicants, you can add information or change your application only if it does not affect the scope of the project and would not affect the score of the application. If part of an application contains actions that we cannot fund with a BIG grant, we will decide on a case-by-case basis whether we will consider the rest of the application for funding. During this period we may ask you to change the useful life following the requirements at § 86.75 or allocating costs between users of the BIG project following the requirements at § 86.19.

(c) You must inform us of any incorrect information in an application as soon as you discover it, either before or after receiving an award.

(d) We may ask you at any point in the application process to:

(1) Clarify, correct, explain, or supplement data and information in the application;

(2) Justify the eligibility of a proposed action; or

(3) Justify the allowability of proposed costs or in-kind contributions.

(e) If you do not respond fully to our questions at paragraph (d) in this section in the time allotted, we will not consider your application for funding.

(f) If funding is limited and we cannot fully fund your project, we may tell you the amount of available funds and ask you if you wish to adjust your application to reduce the amount of funding requested.

Subpart E—Project Selection

§ 86.50 Who ranks BIG Select grant applications?

We assemble a panel of our professional staff to review, rank, and recommend grant applications for

funding to the Director. This panel may include representatives of our Regional Offices, with Headquarters staff overseeing the review, ranking, and recommendation process. Following the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), the Director may invite nongovernmental organizations and other non-Federal entities to take part in an advisory panel to make recommendations to the Director.

§ 86.51 What criteria does the Service use to evaluate BIG Select applications?

Our panel of professional staff and any invited participants evaluate BIG Select applications using the ranking criteria in the following table and assign points within the range for each criterion. We may give added information to guide applicants regarding these criteria in the annual RFA on *http://www.grants.gov.*

Ranking criteria	Points
(a) Need, Access, and Cost Efficiency	20 total possible points.
(1) Will the proposed boating infrastructure meet a need for more or improved facilities?	0–10.
(2) Will eligible users receive benefits from the proposed boating infrastructure that justify the cost of the project?.	0–7.
(3) Will the proposed boating infrastructure accommodate boater access to significant destinations and services that support transient boater travel?.	0–3.
(b) Match and Partnerships	10 total possible points.
(1) Will the proposed project include private, local, or State funds greater than the required minimum match?	0–7.
(2) Will the proposed project include in-kind contributions by private or public partners that contribute to the project objectives?.	0–3.
(c) Innovation	6 total possible points.
(1) Will the proposed project include physical components, technology, or techniques that improve eligible-user access?.	0–3.
(2) Will the proposed project include innovative physical components, technology, or techniques that improve the BIG-funded project?.	0–2.
(3) Has the facility where the project is located demonstrated commitment to environmental compliance, sustainability, and stewardship and been officially recognized by an agency or organization?.	0–1.
(d) Total possible points	36.

§ 86.52 What does the Service consider when evaluating a project on the need for more or improved boating infrastructure?

In evaluating a proposed project under the criterion at § 86.51(a)(1) on the need for more or improved boating infrastructure facilities, we consider whether the project will:

(a) Construct new boating infrastructure in an area that lacks these facilities, but where eligible vessels now travel or would travel if the project were completed;

(b) Renovate a facility to:

(1) Improve its physical condition;

(2) Follow local building codes;

(3) Improve generally accepted safety standards; or

(4) Adapt it to a new purpose for which there is a demonstrated need;

(c) Create accessibility for eligible vessels by reducing wave action, increasing depth, or making other physical improvements;

(d) Expand an existing marina or mooring site that is unable to accommodate current or projected demand by eligible vessels; or

(e) Make other improvements to accommodate a demonstrated eligible need.

§ 86.53 What factors does the Service consider for benefits to eligible users that justify the cost?

(a) We consider these factors in evaluating a proposed project under the criterion at § 86.51(a)(2) on benefits for eligible users that justify the cost of the project:

(1) Total cost of the project;

(2) Total benefits available to eligible users upon completion of the project; and

(3) Reliability of the data and information used to decide benefits relative to costs.

(b) You must support the benefits available to eligible users by clearly listing and discussing in the project statement how they relate to *Need* (see § 86.43(a)).

(c) We will consider the cost relevant to all benefits to eligible users supported in the application. We may consider the availability of preexisting structures and amenities, but will balance this factor with considering the overall need for the project.

(d) For example, two projects each cost $2 million. One is for new construction at a location with no prior eligible user access. The project statement describes the needs the BIG-funded project will fulfill as:

(1) Added access where none exists,

(2) Added services where none exists, and

(3) New access to a popular boating resource or attraction. The second proposed project is at an existing location, and the project statement describes the need for more slips due to a seasonal event that attracts more boaters than the marina can accommodate. The first project gives more benefits than the second project for the same amount of money, so for this criterion the first project will receive more points than the second project.

§ 86.54 What does the Service consider when evaluating a project on boater access to significant destinations and services that support transient boater travel?

In evaluating a proposed project under the criterion at § 86.51(a)(3) on boater access, we consider:

(a) The degree of access that the BIG-funded facility will give;

(b) The activity, event, or landmark that makes the BIG-funded facility a destination, how well known the attraction is, how long it is available, and how likely it is to attract boaters to the facility; and

(c) The availability of services near the BIG-funded facility, how easily boaters can access them, and how well they serve the needs of eligible users.

§ 86.55 What does the Service consider as a partner for the purposes of these ranking criteria?

(a) The following may qualify as partners for purposes of the ranking criterion:

(1) A non-Federal entity, including a subgrantee.

(2) A Federal agency other than the Service.

(b) The partner must commit to a financial contribution, an in-kind contribution, or to take a voluntary action during the grant period.

(c) In-kind contributions or actions must contribute directly and substantively to the completion of the

project. You must explain in the grant application how it is necessary to complete the project.

(d) A governmental entity may be a partner unless its contribution to completing the project is a mandatory duty of the agency, such as reviewing a permit application. A voluntary action by a government agency or employee is a partnership.

§ 86.56 What does the Service consider when evaluating a project that includes more than the minimum match?

(a) When we evaluate a project under the criterion for match at § 86.51(b)(1), we consider cash above the required 25 percent match that would reduce the percent Federal share of project costs.

(b) The contribution may be from a State, a single source, or any combination of sources.

(c) We will award points as follows:

Percent cash match	Points
26–29	1
30–39	2
40–49	3
50–59	4
60–69	5
70–79	6
80 or higher	7

§ 86.57 What does the Service consider when evaluating in-kind contributions that a partner brings to a project?

(a) We consider the non-cash, in-kind contribution that a partner brings to the project and the significance of each action to the objectives and success of the project in evaluating a project under the criterion at § 86.51(b)(2).

(b) To qualify, a partner's contribution must be necessary to accomplish the project objectives. The grant application must state specifically how the partner's contribution helps construct, renovate, or maintain the project or otherwise contributes to the success of the project.

(c) In-kind contributions from partners need not exceed the 25 percent required match.

§ 86.58 What does the Service consider when evaluating a project for a physical component, technology, or technique that will improve eligible user access?

(a) In evaluating a proposed project under the criterion at § 85.51(c)(1), we consider whether the project will increase the availability of the BIG-funded facility for eligible users or improve eligible boater access to the facility by:

(1) Using a new technology or technique; or

(2) Applying a new use of an existing technology or technique.

(b) We will not award points for following access standards set by law.

(c) We will consider when you choose to complete the project using an optional or advanced technology or technique that will improve access, or if you go beyond the minimum requirements.

(d) To receive consideration for this criterion, you must describe in the grant application the current standard and how you will exceed the standard.

§ 86.59 What does the Service consider when evaluating a project for innovative physical components, technology, or techniques that improve the BIG project?

(a) In evaluating a proposed project under the criterion at § 86.51(c)(2), we consider if the project will include physical components, technology, or techniques that are:

(1) Newly available; or

(2) Repurposed in a unique way.

(b) Examples of the type of innovations we will consider are components, technology, or techniques that:

(1) Extend the useful life of the BIG-funded project;

(2) Are designed to allow the operator to save costs, decrease maintenance, or improve operation;

(3) Are designed to improve BIG-eligible services or amenities;

(4) During construction, are used specifically to reduce negative environmental impacts; or

(5) Reduce the carbon footprint of the BIG-funded facility.

§ 86.60 What does the Service consider when evaluating a project for demonstrating a commitment to environmental compliance, sustainability, and stewardship?

(a) In evaluating a project under the criterion at § 86.51(c)(3), we consider if the application documents that the facility where the BIG-funded project is located has received official recognition for its voluntary commitment to environmental compliance, sustainability, and stewardship by exceeding regulatory requirements.

(b) The official recognition must be part of a voluntary, established program administered by a Federal or State agency, local governmental agency, Sea Grant or equivalent entity, or a State or Regional marina organization.

(c) The established program must require the facility to use management and operational techniques and practices that will ensure it will continue to meet the high standards of the program and must contain a component that requires periodic review.

(d) The facility must have met the criteria required by the established program and received official recognition at the time of the application.

§ 86.61 What happens after the Director approves projects for funding?

(a) After the Director approves projects for funding, we notify successful applicants of the:

(1) Amount of the grant;

(2) Documents or clarifications required, including those required for compliance with applicable laws and regulations;

(3) Approvals needed and format for processing approvals; and

(4) Time constraints.

(b) After we receive the required forms and documents, we approve the project and the terms of the grant and obligate the grant in the Federal financial management system.

(c) BIG funds are available for Federal obligation for 3 Federal fiscal years, starting October 1 of the fiscal year that funds become available for award. We do not make a Federal obligation until you meet the grant requirements. Funds not obligated within 3 fiscal years are no longer available.

Subpart F—Grant Administration

§ 86.70 What standards must I follow when constructing a BIG-funded facility?

(a) You must design and build a BIG-funded facility so that each structure meets Federal, State, and local standards.

(b) A Region or a State may require you to have plans reviewed by a subject-matter expert if there are questions as to the safety, structural stability, durability, or other construction concerns for projects in excess of $100,000.

§ 86.71 How much time do I have to complete the work funded by a BIG grant?

(a) We must obligate a grant within 3 Federal fiscal years of the beginning of the Federal fiscal award year.

(b) We assign a grant period that is no longer than 3 years from the grant start date. (c) You must complete your project within the grant period unless you ask for and receive a grant extension.

§ 86.72 What if I cannot complete the project during the grant period?

(a) If you cannot complete the project during the 3-year grant period, you may ask us for an extension. Your request must be in writing, and we must receive it before the end of the original grant period.

(b) An extension is considered a revision of a grant and must follow guidance at § 86.101.

(c) We will approve an extension up to 2 years if your request:

(1) Describes in detail the work you have completed and the work that you plan to complete during the extension;

(2) Explains the reasons for delay;

(3) Includes a report on the status of the project budget; and

(4) Includes assurance that you have met or will meet all other terms and conditions of the grant.

(d) If you cannot complete the project during the extension period, you may ask us for a second extension. Your request must be in writing, and we must receive it before the end of the first extension. Your request for a second extension must include all of the information required at paragraph (b) of this section and, it must show that:

(1) The extension is justified;

(2) The delay in completion is not due to inaction, poor planning, or mismanagement; and

(3) You will achieve the project objectives by the end of the second extension.

(e) We require that your Regional Director and the Service's Assistant Director for the Wildlife and Sport Fish Restoration Program approve requests to extend a project beyond 5 years of the grant start date.

§ 86.73 What if I need more funds to finish a project?

(a) If you need more money to finish a BIG Select project, you must:

(1) Complete the project with funds from non-Federal sources; or

(2) Ask for approval to revise the grant by following the requirements in subpart H of this part.

(b) If you need more money to finish a BIG Standard project, you may:

(1) Complete the project with funds from non-Federal sources;

(2) Complete the project with funds from another annual BIG Standard grant; or

(3) Ask for approval to revise the grant by following the requirements in subpart H of this part.

(c) If you do not complete your project, we follow guidance for noncompliance found in 43 CFR 12.83 and 12.962, and any other regulations that may apply.

§ 86.74 How long must I operate and maintain a BIG-funded facility, and who is responsible for the cost of facility operation and maintenance?

(a) You must operate and maintain a BIG-funded facility for its authorized purpose for its useful life. See §§ 86.3, 86.43(f), and 86.75.

(b) Catastrophic events may shorten the identified useful life of a BIG-funded facility. If it is not feasible or is cost-prohibitive to repair or replace the BIG-funded facility, you may ask to revise the grant to reduce the useful-life obligation.

(c) You are responsible for the costs of the operation and maintenance of the BIG-funded facility for its useful life, except as allowed in § 86.14(b).

§ 86.75 How do I determine the useful life of a BIG-funded facility?

Before we approve your grant, you must propose and show the useful life of the BIG-funded facility.

(a) You must determine the useful life of a BIG-funded facility by:

(1) Identifying each capital improvement for your project. The capital improvement must be a structure or system that meets the definition at § 86.3 and serves an identified purpose, such as: A building; dock system; breakwater; seawall; basin, as altered by dredging; fuel station; or pumpout system.

(2) Showing the expected useful life and how you determined the useful life for each capital improvement.

(3) Using a generally accepted method to determine the useful life of a capital improvement.

(4) Determining useful life based on the functional purpose of the capital improvement. For example, if a dock system has a concrete base that will last at least 50 years, but you expect the overall useful life of the dock system to be 20 years, use 20 years.

(b) A BIG-funded facility may have several useful-life components. For example, a single grant may include a fuel dock system with a useful life of 15 years and a breakwater with a useful life of 50 years.

(c) You may include all components of a BIG-funded facility into a single useful life if you use the process in paragraph (a) of this section and determine the useful life for the total project based on the longest useful life of any structure or system in the grant.

(d) We may reject your grant application if you do not adequately justify the useful life of each capital improvement.

(e) If you propose a physical component, technology, or technique under the criterion in § 86.51(c) that will increase the useful life, you must describe in your application:

(1) The expected increase in useful life; and

(2) The sources of information that support your determination of an extended useful life.

(f) If we find before we award the grant that you are unable to support your determination of an extended useful life, we will reduce your score and adjust the ranking of applications accordingly.

(g) We may consult with you and any subgrantees on the proposed useful life of any capital improvement in the BIG project at any time between receiving your application and our approval of the grant. Any changes you make to useful life after we receive your application you must include in the project statement.

§ 86.76 How should I credit the BIG program?

(a) You must use the Sport Fish Restoration logo to show the source of BIG funding:

(b) Examples of language you may use to credit the BIG program are:

(1) A Sport Fish Restoration—Boating Infrastructure Grant funded this facility thanks to your purchase of fishing equipment and motorboat fuel.

(2) A Sport Fish Restoration—Boating Infrastructure Grant is funding this construction thanks to your purchase of fishing equipment and motorboat fuel.

(3) A Sport Fish Restoration—Boating Infrastructure Grant funded this pamphlet thanks to your purchase of fishing equipment and motorboat fuel.

(c) States may ask for approval of alternative language to follow ordinances and restrictions for posting information where the project is located.

§ 86.77 How can I use the logo for the BIG program?

(a) You must use the Sport Fish Restoration logo on:

(1) BIG-funded facilities;

(2) Printed or Web-based material or other visual representations of BIG projects or accomplishments; and

(3) BIG-funded or BIG-related educational and informational material.

(b) You must require a subgrantee to display the logo in the places and on materials described at paragraph (a) of this section.

(c) Businesses that contribute to or receive from the Trust Fund that we describe in § 86.30 may display the logo in conjunction with its associated products or projects.

(d) The Director or Regional Director may authorize other persons, organizations, agencies, or governments that are not grant recipients to use the

logo for purposes related to the BIG program by entering into a written agreement with the user. The user must state how it intends to use the logo, to what it will attach the logo, and the relationship to the BIG program.

(e) The Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the logo as to the quality, utility, suitability, or safety of any product, service, or project associated with the logo.

(f) The user of the logo must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:

(1) Any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the logo, or any other alleged action of the user; and

(2) Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the logo.

(g) No one may use any part of the logo in any other manner unless the Service's Assistant Director for Wildlife and Sport Fish Restoration or Regional Director authorizes it. Unauthorized use of the logo is a violation of 18 U.S.C. 701 and subjects the violator to possible fines and imprisonment.

§ 86.78 How must I treat program income?

(a) You must follow the applicable program income requirements at 43 CFR 12.65 or 12.924 if you earn program income during the grant period.

(b) We authorize the following options in the regulations cited in paragraph (a) of this section:

(1) You may deduct the costs of generating program income from the gross income if you did not charge these costs to the grant. An example of costs that may qualify for deduction is maintenance of the BIG-funded facility that generated the program income.

(2) Use the addition alternative for program income only if:

(i) You describe the source and amount of program income in the project statement according to § 86.43(k)(2); and

(ii) We approve your proposed use of the program income, which must be for one or more of the actions eligible for funding in § 86.11.

(3) Use the deduction alternative for program income that does not qualify under paragraph (b)(2) of this section.

(c) We do not authorize the cost-sharing or matching alternative in the regulations cited in paragraph (a) of this section.

(d) For BIG Standard grants with multiple projects that you may complete at different times, we recommend that States seek our advice on how to apply for and manage grants to reduce unintended program income.

§ 86.79 How must I treat income earned after the grant period?

You are not accountable to us for income earned by you or a subgrantee after the grant period as a result of the grant except as required at §§ 86.90 and 86.91.

Subpart G—Facility Operations and Maintenance

§ 86.90 How much must an operator of a BIG-funded facility charge for using the facility?

(a) An operator of a BIG-funded facility must charge reasonable fees for using the facility based on prevailing rates at other publicly and privately owned local facilities offering a similar service or amenity.

(b) If other publicly and privately owned local facilities offer BIG-funded services or amenities free of charge, then a fee is not required.

(c) If the BIG-funded facility has a State or locally imposed fee structure, we will accept the mandated fee structure.

(d) You must state proposed fees and the basis for the fees in your grant application. The information you give may be in any format that clearly shows how you arrived at an equitable amount.

§ 86.91 May an operator of a BIG-funded facility increase or decrease user fees during its useful life?

(a) An operator of a BIG-funded facility may increase or decrease user fees during its useful life without our prior approval if they are consistent with prevailing market rates. The grantee may impose separate restrictions on an operator or subgrantee.

(b) If the grantee or we discover that fees charged by the operator of a BIG-funded facility do not follow § 86.90 and the facility unfairly competes with other marinas or makes excessive profits, the grantee must notify the operator in writing. The operator must respond to the notice in writing, and either justify or correct the fee schedule. If the operator justifies the fee schedule, the grantee and we must allow reasonable business decisions and only call for a change in the fee schedule if the operator is unable to show that the increase or decrease is reasonable.

§ 86.92 Must an operator of a BIG-funded facility allow public access?

(a) *Public access* in this part means access by eligible users, for eligible activities, or by other users for other activities that either support the purpose of the BIG-funded project or do not interfere with the purpose of the BIG-funded project. An operator of a BIG-funded facility must not allow activities that interfere with the purpose of the project.

(b) An operator of a BIG-funded facility must allow public access to any part of the BIG-funded facility during its useful life, except as described at paragraphs (e) and (f) of this section.

(c) An operator of a BIG-funded facility must allow reasonable public access to other parts of the facility that would normally be open to the public and must not limit access in any way that discriminates against any member of the public.

(d) The site of a BIG-funded facility must be:

(1) Accessible to the public; and

(2) Open for reasonable periods.

(e) An operator may temporarily limit public access to all or part of the BIG-funded facility due to an emergency, repairs, construction, or as a safety precaution.

(f) An operator may limit public access when seasonally closed for business.

§ 86.93 May I prohibit overnight use by eligible vessels at a BIG-funded facility?

You may prohibit overnight use at a BIG-funded facility if you state in the approved grant application that the facility is only for day use. If after we award the grant you wish to change to day use only, you must follow the requirements in subpart H of this part.

§ 86.94 Must I give information to eligible users and the public about BIG-funded facilities?

(a) You must give clear information using signs or other methods at BIG-funded facilities that:

(1) Direct eligible users to the BIG-funded facility;

(2) Include restrictions and operating periods or direct boaters where to find the information; and

(3) Restrict ineligible use at any part of the BIG-funded facility designated only for eligible use.

(i) You do not need to notify facility users of any restrictions for shared-use areas and amenities that you have already decided have predictable mixed use and you have allocated following § 86.19.

(ii) You must notify facility users of benefits that you decide are only for eligible users, such as boat slips and moorage.

(b) You may use new technology and methods of communication to inform boaters.

Subpart H—Revisions and Appeals

§ 86.100 Can I change the information in a grant application after I receive a grant?

(a) To change information in a grant application after you receive a grant, you must propose a revision of the grant and we must approve it.

(b) We may approve a revision if:

(1) For BIG Standard and BIG Select awards, the revision:

(i) Would not significantly decrease the benefits of the project; and

(ii) Would not increase Federal funds.

(2) For BIG Select awards, the revision:

(i) Involves process, materials, logistics, or other items that have no significant effect on the factors used to decide score; and

(ii) Maintains an equal or greater percentage of the non-Federal matching share of the total BIG project costs.

(c) We may approve a decrease in the Federal funds requested in the application subject to paragraph (b) of this section.

(d) The Regional WSFR Office must follow its own procedures for review and approval of any changes to a BIG Standard grant.

(e) The Regional WSFR Office must receive approval from the WSFR Headquarters Office for any changes to a BIG Select grant that involves cost or affects project benefits.

§ 86.101 How do I ask for a revision of a grant?

(a) You must ask for a revision of a grant by sending us the following documents:

(1) The standard form used to apply for Federal assistance, which is available at *http://www.grants.gov.*You must use this form to update or ask for a change in the information that you included in the approved grant application. The authorized representative of your agency must certify this form.

(2) A statement attached to the standard form at paragraph (a)(1) of this section that explains:

(i) The proposed changes and how the revision would affect the information that you submitted with the original grant application; and

(ii) Why the revision is necessary.

(b) You must send any revision of the scope to your State Clearinghouse or Single Point of Contact if your State supports this process under Executive Order 12372, Intergovernmental Review of Federal Programs.

§ 86.102 Can I appeal a decision?

You can appeal the Director's, Assistant Director's, or Regional Director's decision on any matter subject to this part.

(a) You must send the appeal to the Director within 30 days of the date that the Director, Assistant Director, or Regional Director mails or otherwise informs you of a decision.

(b) You may appeal the Director's decision under paragraph (a) of this section to the Secretary within 30 days of the date that the Director mailed the decision. An appeal to the Secretary must follow procedures in 43 CFR part 4, subpart G, ''Special Rules Applicable to other Appeals and Hearings''.

§ 86.103 Can the Director authorize an exception to this part?

The Director can authorize an exception to any requirement of this part that is not explicitly required by law if it does not conflict with other laws or regulations or the policies of the Department of the Interior or the OMB.

Subpart I—Information Collection

§ 86.110 What are the information-collection requirements of this part?

(a) This part requires each applicant in the BIG program to:

(1) Give us information on Standard Form 424, Application for Federal Assistance (OMB control number 4040–0004).

(2) Certify on Standard Form 424 B, Assurances for Nonconstruction Programs, or Standard Form 424 D, Assurances for Construction Programs, or both if applicable, (OMB control numbers 4040–0007 and 4040–0009) that it:

(i) Has the authority to apply for the grant;

(ii) Has the ability to complete the project; and

(iii) Will follow the laws, regulations, and policies applicable to construction projects, nonconstruction projects, or both.

(3) Submitting on Standard Form 424 A, Budget Information for Non-Construction Programs, or Standard Form 424 C, Budget Information for Construction Programs, or both if applicable, (OMB control numbers 4040–0006 and 4040–0008) costs associated with the project and the categories for the costs.

(4) Submitting on Standard Form SF–LLL Disclosure of Lobbying Activities and Standard Form SF–LLLA Disclosure of Lobbying Activities Continuation Sheet, as appropriate, to disclose lobbying activities pursuant to 31 U.S.C. 1352.

(5) Complete a project statement that describes the need, objectives, results and benefits expected, approach, location, cost explanation, and other information that shows that the project is eligible under the authorizing legislation and meets the requirements of the Federal Cost Principles and the laws, regulations, and policies applicable to the grant program (OMB control number 1018–0109).

(b) This part requires each grantee in the BIG program to:

(1) Update information given to the Service in an earlier approved application (OMB control number 1018–0109).

(2) Report on a Standard Form 425, Federal Financial Report, on the status of Federal grant funds and any program income earned (OMB control number 0348–0061).

(3) Report on progress in completing the grant-funded project (OMB control number 1018–0109).

(4) Follow any future requirements for reporting financial and performance actions of a grant using added forms or formats for inputting information.

(c) The authorizations for information collection under this part are in OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' and in 43 CFR part 12, subpart C, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

(d) Send comments on the information collection requirements to: U.S. Fish and Wildlife Service, Information Collection Clearance Officer, 4401 North Fairfax Drive, MS 2042–PDM, Arlington, VA 22203.

Dated: April 3, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–08998 Filed 4–24–14; 8:45 am]

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Part VI

Bureau of Consumer Financial Protection

12 CFR Part 1005

Electronic Fund Transfers (Regulation E); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2014–0008]

RIN 3170–AA45

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend subpart B of Regulation E, which implements the Electronic Fund Transfers Act, and the official interpretation to the regulation. The proposal would extend a temporary provision that permits insured institutions to estimate certain pricing disclosures pursuant to section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Absent further action by the Bureau, that exception expires on July 21, 2015. Based on a preliminary determination that the termination of the exception would negatively affect the ability of insured institutions to send remittance transfers, the Bureau is proposing to extend the temporary exception by five years from July 21, 2015, to July 21, 2020. The Bureau is also proposing several clarifying amendments and technical corrections to the final rule and commentary.

DATES: Comments must be received on or before May 27, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2014–0008 or RIN 3170–AA45, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jane G. Raso, Jennifer Kozma, and Shiri Wolf, Counsels; Eric Goldberg, Senior Counsel, Office of Regulations, at (202) 435–7700 or *CFPB_RemittanceRule@consumerfinance.gov* (please do not submit comments on the proposal to this email address). Please also visit the following Web site for additional information about the remittance rule: *http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010), amended the Electronic Fund Transfers Act (EFTA) by establishing a new and comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. The statute defines ''remittance transfer'' to include most electronic transfers of funds sent by consumers in the United States to recipients in other countries. Between February 2012 and August 2013, the Bureau issued several final rules concerning remittance transfers pursuant to the Dodd-Frank Act (collectively, the 2013 Final Rule or the Remittance Rule). The 2013 Final Rule took effect on October 28, 2013.

This document proposes several amendments to the provisions adopted by the 2013 Final Rule to refine, clarify, or revise regulatory provisions and official interpretations previously adopted by the Bureau.

A. Temporary Exception

EFTA section 919(a)(4) creates a temporary exception that allows covered remittance transfer providers to estimate fees and exchange rates in certain circumstances; the exception expires five years after the enactment of the Dodd-Frank Act, or July 21, 2015.[1] However, if the Bureau determines that expiration of the temporary exception would negatively affect the ability of insured institutions to send remittances to locations in foreign countries, the statute permits the Bureau to extend the temporary exception for up to ten years after enactment of the Dodd-Frank Act (*i.e.,* to July 21, 2020). *See* EFTA section 919(a)(4)(B).

The Bureau is proposing to extend the Regulation E estimation provision that implements this statutory provision, § 1005.32(a) in the 2013 Final Rule. Section 1005.32(a) allows remittance transfer providers to estimate certain third-party fees and exchange rates associated with a remittance transfer if certain conditions are met, namely, that: (1) The provider is an insured depository institution or credit union; (2) the remittance transfer is sent from the sender's account with the provider; and (3) the provider cannot determine the exact amounts for reasons outside of its control.

To assist the Bureau in determining the appropriateness of extending the temporary exception, Bureau staff conducted outreach, including interviewing approximately 35 industry and consumer group stakeholders after the 2013 Final Rule took effect to gather information on the remittance transfer market; industry practices, including the extent of reliance on the temporary exception; and the impact of the exception and its potential expiration on providers and consumers.

Based on this outreach and other research and analysis, the Bureau has preliminarily determined that the termination of the temporary exception would negatively affect the ability of insured institutions to send remittance transfers. Thus, the Bureau is proposing to amend § 1005.32(a)(2) by extending the temporary exception by five years from July 21, 2015, to July 21, 2020.

B. Additional Clarifications

Additionally, the Bureau is proposing several clarificatory amendments and technical corrections to the Remittance Rule. First, the Bureau seeks comment on whether (and if so, how) it should clarify how U.S. military installations abroad are treated for purposes of the Remittance Rule. The Bureau believes there is a potential for confusion in their treatment because the Remittance Rule does not expressly address their status. Second, the Bureau proposes to clarify that whether a transfer from an account is for personal, family, or household

[1] Public Law 111–203 was signed into law on July 21, 2010.

purposes (and thus, whether the transfer could be a remittance transfer) is determined by ascertaining the purpose for which the account was created. Third, the Bureau proposes to clarify that faxes are considered writings for purposes of the Remittance Rule, and that, in certain circumstances, a remittance transfer provider may provide oral disclosures after receiving a remittance inquiry from a consumer in writing. Finally, the Bureau is proposing to clarify two of the rule's error resolution provisions. More specifically, the Bureau is proposing to clarify what constitutes an ''error'' caused by delays related to fraud and related screening, and to clarify the remedies for certain errors.

II. Background

A. Types of Remittance Transfers

As discussed in more detail in the 2013 Final Rule, consumers can choose among several methods of transferring money to foreign countries. 77 FR 6193 (Feb. 7, 2012). These methods generally involve either closed network or open network systems, although hybrids between open and closed networks also exist. Consistent with EFTA section 919, the 2013 Final Rule applies to remittance transfers sent through any electronic mechanism, including closed network and open network systems, or some hybrid of the two. As detailed below, in practice, the situations in which the temporary exception applies frequently involve transfers remitted through open networks.

Closed Networks and Money Transmitters

In a closed network, a remittance transfer provider uses either its own operations or a network of agents or other partners to collect funds from senders in the United States and disburse those funds to designated recipients abroad. Through the provider's contractual arrangements with those agents or other partners, the provider can exercise some control over the remittance transfer from end to end, including to set, limit, and/or learn of fees, exchange rates, and other terms of service. Accordingly, the Bureau expects that a provider that is sending remittance transfers using some version of a closed network is likely able to leverage its control and knowledge of the transfer terms in order to be able to disclose the exact exchange rates and third-party fees that apply to remittance transfers.

Non-depository institutions, known generally as money transmitters, are the type of remittance transfer providers that most frequently use closed networks to send remittance transfers. Remittance transfers sent through money transmitters can be funded by the sender and received abroad using a variety of payments devices. However, the Bureau believes that most remittance transfers sent by money transmitters are currently sent and received abroad in cash, rather than as, for example, debits from and/or direct deposits to accounts held by depository institutions or credit unions.

Open Networks and Wire Transfers

As the data discussed below indicates, the most common form of open network remittance transfer is a wire transfer, an electronically transmitted order that directs a receiving institution to deposit funds into an identified beneficiary's account. Unlike closed network transactions, which generally can only be sent to entities that have signed on to work with the specific provider in question, wire transfers can reach most banks (or other similar institutions) worldwide through national payment systems that are connected through correspondent and other intermediary bank relationships. Unlike closed networks, open networks are typically used to send funds from and to accounts at depository institutions, credit unions, or similar financial institutions. The Bureau believes that the great majority of open network transfers are provided by insured institutions (including credit unions) and that, in turn, open network transfers are the most common type of remittance transfer provided by insured institutions and broker-dealers. However, some money transmitters may also use open networks to send some or all of their remittance transfers.

In an open network, the remittance transfer provider with which the consumer interfaces, *i.e.,* the originating entity, typically does not have control over, or a relationship with, all of the participants in the remittance transfer. The provider may communicate indirectly with the receiving institution by sending funds and payment instructions to a correspondent institution, which will then transmit the instructions and funds to the recipient institution directly, such as in the form of a book transfer, or indirectly through other intermediary institutions (a serial payment). Alternatively, under certain circumstances, the sending institution may send payment instructions directly to the recipient institution, but it will nevertheless rely on a network of intermediary bank relationships to send funds for settlement (a cover payment). In some cases, depending on how the transfer is sent, any one of the intermediary institutions through which the remittance transfer passes may deduct a fee from the principal amount (sometimes referred to as a lifting fee). Likewise, if the originating institution does not conduct any necessary currency exchange, any institution through which the funds pass potentially could perform the currency exchange before deposit into the designated recipient's account.

Institutions involved in open network transfers may learn about each other's practices regarding fees or other matters through contractual or other relationships, through experience in sending such transfers over time, through reference materials, through information provided by the consumer, or through surveying other institutions. However, at least until the implementation of the 2013 Final Rule, intermediary and recipient institutions did not, as a matter of uniform practice, communicate with originating entities regarding the fees and exchange rates that institutions might apply to transfers. Further, as the Bureau has previously noted, the communication systems used to send these transfers typically do not facilitate two-way, real-time transmission of information about the exchange rate and fees associated with the transfers sent through them. *See* 78 FR 30662, 30663 (May 23, 2013) (May 2013 Final Rule). As is explained in more detail below, the Bureau believes that this is largely due to these characteristics of open network systems and that insured institutions using those networks are sometimes relying on the temporary exception to estimate exchange rates and/or intermediary fees (known as covered third-party fees in the Remittance Rule).

International ACH

In recent years, some depository institutions and credit unions have begun to send remittance transfers through the automated clearing house (ACH) system. In the February 2012 Final Rule, the Bureau explained that it considered international ACH transfers to be open network transactions, because, like wire transfers, international ACH transfers can involve payment systems in which a large number of sending and receiving institutions may participate, such that the sending institution and the receiving institution may have no direct relationship. The Bureau acknowledged, however, that international ACH transfers also share some characteristics of closed network transfers, in that the agreements among gateway ACH operators and the United States and

foreign entities involved may be used to control the amount and type of fees that are charged and/or exchange rates that are applied in connection with a remittance transfer. To maintain consistency with the February 2012 Final Rule, international ACH transfers are discussed herein as open network transactions.

Available Remittance Transfer Market Share Data

Based on available information and as discussed in greater detail below, the Bureau believes that closed network transactions make up the great majority of the remittance transfers sent. Relatedly, the Bureau believes that, collectively, money transmitters send far more remittance transfers each year than depository institutions and credit unions. The Bureau recently estimated that money transmitters annually send about 150 million international money transfers, most of which the Bureau believes would likely qualify as remittance transfers pursuant to § 1005.30(e) and, thus, be covered by the Remittance Rule. *See* 79 FR 5302, 5306. (Jan. 31, 2014). By comparison, information reported by credit unions to the National Credit Union Administration (NCUA) suggests that credit unions may have collectively sent less than 1% of this total in 2013 (in fact, less than 1 million remittance transfers combined). The Bureau estimates that depository institutions send many more remittance transfers than credit unions, due to the relative collective size of depository institutions and credit unions, but still far fewer than money transmitters. For example, based on its interviews of some depository institutions, the Bureau roughly estimates that depository institutions collectively may send only 10 percent or less of the estimated 150 million remittance transfers sent by money transmitters. On the other hand, the Bureau believes that the average size of the transfers sent by depository institutions and credit unions is larger than the average size of a remittance transfer sent by a money transmitter; a transfer sent by a depository institution or credit union may be in the thousands of dollars, while the Bureau estimates that the average size of remittance transfers sent by money transmitters average in the hundreds of dollars. *See* 79 FR at 5306.[2]

B. Section 1073 of the Dodd-Frank Act

Section 1073 of the Dodd-Frank Act amended the EFTA by establishing a new consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. For covered transactions sent by remittance transfer providers, section 1073 created a new EFTA section 919 and generally requires: (i) The disclosure of the actual exchange rate and remitted amount to be received prior to and at the time of payment by the consumer; (ii) cancelation and refund rights; (iii) the investigation and remedy of errors by providers; and (iv) liability standards for providers for the acts of their agents. 15 U.S.C. 1693o–1.

EFTA section 919 provides two exceptions to the requirement that providers disclose actual amounts.[3] The first, the temporary exception, is an accommodation for insured depository institutions and credit unions, in apparent recognition of the fact that these institutions might need additional time to develop the necessary systems or protocols to disclose the exchange rates and/or covered third-party fees that might be imposed on a remittance transfer. The temporary exception permits an insured institution that is sending a remittance transfer from the sender's account to provide reasonably accurate estimates of the amount of currency to be received where that institution is ''unable to know [the amount], for reasons beyond its control'' at the time that the sender requests a transfer through an account held with the institution. EFTA section 919(a)(4)(A). The temporary exception sunsets five years from the date of enactment of the Dodd-Frank Act (*i.e.,* July 21, 2015), but permits the Bureau to extend that date for no more than five years (*i.e.,* July 21, 2020) if it determines that termination of the temporary exception would negatively affect the ability of depository institutions and credit unions to send remittance transfers. EFTA section 919(a)(4)(B).

The second statutory exception is permanent; it provides that if the Bureau determines that a recipient country does not legally allow, or that the method by which the transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Bureau may prescribe rules addressing the issue. EFTA section 919(c).

C. Remittance Rulemakings Under the Dodd-Frank Act

The Bureau published three final rules in 2012 and two final rules in 2013 to implement section 1073 of the Dodd-Frank Act. These five final rules are summarized below.

The 2012 Final Rules

The Board of Governors of the Federal Reserve System (the Board) first proposed in May 2011 to amend Regulation E to implement the remittance transfer provisions in section 1073 of the Dodd-Frank Act. 76 FR 29902 (May 23, 2011). On February 7, 2012, the Bureau finalized the Board's proposal in the February 2012 Final Rule as authority to implement the new Dodd-Frank Act provisions amending the EFTA had transferred from the Board to the Bureau on July 21, 2011. *See* 12 U.S.C. 5581(bb)(1); 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include the EFTA).

The February 2012 Final Rule includes provisions that generally require a remittance transfer provider to provide to a sender a written pre-payment disclosure containing detailed information about the transfer requested by the sender, including, among other things, the exchange rate, certain fees and taxes, and the amount to be received by the designated recipient. In addition to the pre-payment disclosure, the provider also must furnish to a sender a written receipt when payment is made for the transfer. The receipt must include the information provided on the pre-payment disclosure, as well as additional information, such as the date of availability of the funds, the designated recipient's name and, if provided, contact information, and information regarding the sender's error resolution and cancellation rights. In some cases, providers may provide these disclosures orally or via text message. § 1005.31(a)(3)–(5). As is noted below, the Bureau subsequently modified provisions regarding the disclosure of foreign taxes and certain recipient institution fees in its May 2013 Final Rule.

The February 2012 Final Rule generally requires that disclosures state the actual exchange rate, if any, that will apply to the transfer and the actual amount that will be received by the designated recipient of a remittance transfer, unless an exception applies. Section 1005.32(a) implements the temporary exception and the provision that is now § 1005.32(b)(1) implements the permanent statutory exception. As adopted, this permanent exception permits a remittance transfer provider to

[2] We lack data on the volume of remittance transfers sent by broker-dealers.

[3] Two additional permanent exceptions, in § 1005.32(b)(2) and (b)(3) are discussed below.

rely on a list of countries published by the Bureau to determine whether estimates may be provided.[4]

The February 2012 Final Rule also implements EFTA sections 919(d) and (f), which direct the Bureau to promulgate error resolution standards and rules regarding appropriate cancellation and refund policies, as well as standards of liability for remittance transfer providers.

The Bureau published an amendment to the February 2012 Final Rule on August 20, 2012.[5] The amendments adopted in the August 2012 Final Rule include a safe harbor defining which persons are not remittance transfer providers for purposes of the Remittance Rule because they do not provide remittance transfers in the normal course of their business. The August 2012 Final Rule also modified several aspects of the February 2012 Final Rule by adding provisions governing remittance transfers that are scheduled before the date of transfer, including a provision allowing estimation for transfers scheduled before the date of transfer. *See* § 1005.32(b)(2). The 2012 Final Rule originally had an effective date of February 7, 2013, but on January 29, 2013, the Bureau temporarily delayed the February 7, 2013 effective date. *See* 78 FR 6025 (Jan. 29, 2013).

The 2013 Final Rule

Following the publication of the February 2012 Final Rule, the Bureau engaged in dialogue with both industry and consumer groups regarding implementation efforts and compliance concerns. As an outgrowth of those conversations, the Bureau decided to propose amendments to specific aspects of the 2012 Final Rule in a notice of proposed rulemaking published on December 31, 2012. *See* 77 FR 77188 (Dec. 31, 2012).

The Bureau finalized these proposed amendments in the May 2013 Final Rule. The May 2013 Final Rule modifies the 2012 Final Rule to make optional, in certain circumstances, the requirement to disclose fees imposed by a designated recipient's institution (referred to as non-covered third-party fees) and the requirement to disclose taxes collected by a person other than the remittance transfer provider. In place of these two former requirements, the May 2013 Final Rule requires, where applicable, disclaimers to be added to the rule's disclosures indicating that the recipient may receive less than the disclosed total due to the fees and taxes for which disclosure is now optional. The May 2013 Final Rule also created an additional permanent exception that allows providers to estimate, if they choose to, non-covered third-party fees and taxes collected by a person other than the provider. *See* § 1005.32(b)(3). Finally, the May 2013 Final Rule revised the error resolution provisions that apply when a remittance transfer is not delivered to a designated recipient because the sender provided incorrect or insufficient information. On August 14, 2013, the Bureau adopted a clarificatory amendment and a technical correction to the May 2013 Final Rule. 78 FR 49365 (Aug. 14, 2013). The 2013 Final Rule became effective on October 28, 2013.

Notice of Proposed Rulemaking Regarding Larger Participants

Section 1024 of the Dodd-Frank Act establishes that the Bureau may supervise certain nonbank covered persons that are ''larger participants'' in consumer financial markets as defined by rule. 12 U.S.C. 5514(a)(1)(B). Pursuant to this authority, the Bureau published a proposal on January 31, 2014, to identify a nonbank market for international money transfers and define ''larger participants'' of this market that would be subject to the Bureau's supervisory program. 79 FR 5302. Specifically, the proposal would extend Bureau supervisory authority to any nonbank international money transfer provider that has at least one million aggregate annual international money transfers to determine compliance with, among other things, the Remittance Rule. The comment period on this proposal ended on April 1, 2014.[6]

D. Implementation Initiatives for the 2013 Final Rule and Related Activities

The Bureau has been actively engaged in an initiative to support implementation of the 2013 Final Rule. For example, the Bureau has established a Web page that contains links to various industry and consumer resources.[7] These resources include a small entity compliance guide that provides a plain-language summary of the 2013 Final Rule and highlights issues that businesses, in particular small businesses, may want to consider when implementing the 2013 Final Rule. A video overview of the rule and its requirements is also available. Consumer resources the Bureau has created include answers to frequently asked questions regarding international money transfers and materials that consumer groups and other stakeholders can use to educate consumers about the new rights provided to them by the Remittance Rule.[8] Some of these resources are available in languages other than English. The Bureau has also conducted media interviews in English and Spanish and participated in other public engagements to publicize the new consumer rights available under the Remittance Rule. Further, the Bureau provides ongoing guidance support to assist industry and others with interpreting the 2013 Final Rule and has spoken at conferences and other fora where it both provided additional guidance on the Remittance Rule and learned from providers and others about efforts to comply with the Rule.

III. Efforts To Reach a Preliminary Determination Regarding the Temporary Exception

As noted, EFTA section 919(a)(4)(B) permits the Bureau to issue a rule to extend the temporary exception if it determines that the termination of the exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers. In the February 2012 Final Rule, the Bureau noted that industry commenters urged the Bureau at that time to make the temporary exception permanent, or in the alternative, extend the exception to July 21, 2020. The Bureau declined to extend the exception in the 2012 February Final Rule because it believed then that it would be premature to make a determination on the extension prior to the rule's release and implementation

[4] *See http://files.consumerfinance.gov/f/201209_CFPB_Remittance-Rule-Safe-Harbor-Countries-List.pdf.* The Bureau republished the list on November 3, 2013. 78 FR 66251 (Nov. 5, 2013). The list contains countries whose laws the Bureau believes prevent providers from determining, at the time the required disclosures must be provided, the exact exchange rate for a transfer involving a currency exchange. However, if the provider has information that a country's laws or the method by which transactions are conducted in that country permit a determination of the exact disclosure amount, the provider may not rely on the Bureau's list. When the Bureau first issued the list of such countries on September 26, 2012, the Bureau stated that the list is subject to change, and invited the public to suggest additional countries to add to the list. The Bureau continues to accept comment on potential changes to this list.

[5] On July 10, 2012, the Bureau also published a technical correction to the February 2012 Final Rule. *See* 77 FR 40459 (July 10, 2012).

[6] The comments submitted regarding this proposed rule are available at *https://federalregister.gov/a/2014-01606.*

[7] *Available at http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/.*

[8] *Available at http://www.consumerfinance.gov/blog/category/remittances/.*

and three years in advance of the July 2015 sunset date. *See* 77 FR 6193, 6202.

Since the Bureau issued the February 2012 Final Rule, the Bureau has supplemented its understanding of the remittance transfer market through information received in the course of subsequent rulemakings, additional research and monitoring of the market, and initiatives related to the implementation of the 2013 Final Rule. The additional research and monitoring have included series of in-depth conversations with several institutions about how they have implemented the requirements of the 2013 Final Rule, participation in industry conferences and related meetings, as well as related monitoring efforts. In addition and as noted above, Bureau staff conducted interviews with approximately 35 industry stakeholders and consumer groups after the Remittance Rule took effect.[9] Through these interviews, the Bureau gathered information regarding remittance transfer providers' reliance on the temporary exception for certain remittance transfers and whether viable alternatives currently exist for those transfers. The Bureau conducted the interviews in order to build on the Bureau's existing knowledge and assist it in making a determination as to whether expiration of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers.[10]

The remittance transfer providers and service providers that the Bureau contacted included community banks, nonbank money transmitters, regional banks, credit unions, nonbank service providers, correspondent banks, broker-dealers, and very large banks that send consumer remittance transfers on behalf of their retail customers and on behalf of other providers. For example, the Bureau contacted providers, such as broker-dealers, that the Bureau believed send transfers via open networks, similar to those used by many insured institutions.[11] Although the temporary exception only applies to insured institutions, the Bureau believed that interviewing certain nonbank money transmitters that send open network transfers without the advantage of the temporary exception would help the Bureau better understand what methods exist for providing exact disclosures for open network transfers because nonbank money transmitters cannot rely on the temporary exception. The correspondent banks and other service providers the Bureau contacted include corporate credit unions, bankers' banks and foreign banks that offer correspondent banking services to U.S. providers, or act as intermediaries in the payment clearing and settlement chain. Insofar as the conversations were voluntary, the Bureau did not ultimately speak with every institution it contacted.

As noted above, the Bureau has also reviewed data collected by the NCUA regarding remittance transfers through its Call Report and Credit Union Profile forms.[12] These data regard the number and types of remittances sent by credit unions, the methods by which credit unions send remittance transfers, and the payment systems credit unions utilize to send remittance transfers. In addition, the Bureau expects to be able to review data about remittance transfer practices collected from depository institutions through the Federal Financial Institutions Examination Council (FFIEC)'s Consolidated Reports of Conditions and Income (FFIEC Call Report), starting with the reports regarding the quarter ending on March 31, 2014.[13] Starting with the report for the quarter ending March 31, 2014, the FFIEC Call Report form will require reporting depository institutions to provide select information regarding remittance transfers including, as relevant here, information on the types of remittance transfers provided and, for institutions that provide more than 100 transfers per year, the number and dollar value of remittance transfers sent by the reporting institutions in their capacity as remittance transfer providers. The report will also include information on the frequency with which a reporting institution uses the temporary exception in its role as a provider.[14]

The Bureau notes that the NCUA and FFIEC call report data do not cover every practice or type of remittance transfer provider and service provider that the Bureau has researched through its market monitoring and research efforts. However, because some call report data regarding remittance transfers will be available for every depository institution and credit union reporting to the NCUA and FFIEC, respectively, the call reports will provide a valuable, if limited, set of comprehensive quantitative data about two categories of remittance transfer providers (depository institutions and credit unions) that complement the more in-depth qualitative information about certain providers and service providers that the Bureau has been able to gather through interviews and other sources. Furthermore, the Bureau notes that the extent of utilization of the temporary exception is not the only, nor necessarily the primary factor that it will consider in determining whether to extend the temporary exception under EFTA section 919(a)(4)(B).

Finally, the Bureau also notes that its conversations included consultations with a number of consumer groups to attempt to identify the effect, if any, that estimating covered third-party fees and exchange rates has on consumers as well as the potential effect on consumers of the expiration of the temporary exception.

IV. Legal Authority

Section 1073 of the Dodd-Frank Act created a new section 919 of the EFTA and requires remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. As discussed above, the Dodd-Frank Act established a temporary exception in amending the EFTA such that, subject to rules prescribed by the Bureau, insured depository institutions and credit unions may provide estimates of the amount to be received where the remittance transfer provider is ''unable to know [the amount], for reasons beyond its control'' at the time that the sender requests a transfer to be conducted through an account held with the provider. EFTA section 919(a)(4)(A). The Dodd-Frank Act further establishes that the exception shall terminate five years from the date of enactment of the Dodd-Frank Act (*i.e.,* July 21, 2015), unless the Bureau determines that the termination of the exception would negatively affect the ability of depository institutions and credit unions to send remittance transfers, in which case the Bureau may extend the application of the exception to not longer than ten years after the enactment of the Dodd-Frank Act (*i.e.,*

[9] The Office of Management and Budget (OMB) control number for this information collection is 3170–0032.

[10] *See* Consumer Finance Protection Bureau Request for Approval Under the Generic Clearance: Compliance Costs and Other Effects of Regulation, *available at http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201205-3170-003&icID=209232.*

[11] Staff of the Securities and Exchange Commission (SEC) wrote a no-action letter on December 14, 2012 that concludes it will not recommend enforcement actions to the SEC under Regulation E if a broker-dealer provides disclosures as though the broker-dealer were an insured institution for purposes of the temporary exception. The letter is available at *http://www.sec.gov/divisions/marketreg/mr-noaction/2012/financial-information-forum-121412-rege.pdf.*

[12] *See generally http://www.ncua.gov/dataapps/qcallrptdata/Pages/default.aspx.*

[13] *See* FDIC Fin. Inst. Letter 4–2014 (Jan. 24, 2014) (''FIL 4–2014'').

[14] *See* 79 FR 2509 (Jan. 14, 2014); FIL 4–2014.

July 21, 2020). EFTA section 919(a)(4)(B).

In addition, EFTA section 919(d) provides for specific error resolution procedures and directs the Bureau to promulgate rules regarding appropriate cancellation and refund policies. Finally, EFTA section 919(f) requires the Bureau to establish standards of liability for remittance transfer providers, including those providers that act through agents. Except as described below, the proposed rule is proposed under the authority provided to the Bureau in EFTA section 919, and as more specifically described in this Supplementary Information.

V. Section-by-Section Analysis

Section 1005.30 Remittance Transfer Definitions

1005.30(c) Designated Recipient & 1005.30(g) Sender

Application of the Remittance Rule to U.S. Military Installations Abroad

The 2013 Final Rule only applies when a sender located in a ''State'' sends funds to a designated recipient at a location in a ''foreign country.'' [15] *See* § 1005.30(c) and (g). The commentary to the definition of designated recipient further explains that receipt of money at a location in a foreign country depends on whether the funds are received at a location physically outside of any State. *See* comment 30(c)–2.i. In the case of remittance transfers to or from an account, however, the 2013 Final Rule and commentary look to the location of the account rather than the account owner's physical location at the time of transfer. *See* comment 30(c)–2.ii (whether location is in a foreign country); comment 30(g) (whether consumer is located in a State). The Bureau understands that there is a potential for confusion about how these concepts in the 2013 Final Rule apply to transfers of funds to and from U.S. military installations that are within foreign countries because the 2013 Final Rule does not expressly address such transfers.

According to a 2010 Department of Defense report, the United States had 662 military installations in 90 foreign countries.[16] Many of these installations, particularly larger installations and those in more remote locations, host financial institutions that provide services for the electronic transfer of funds. These financial institutions may include depository institutions, credit unions, and agents of nonbank money transmission businesses. The Bureau understands that, typically, these depository institutions or credit unions are branches of U.S. institutions operating under U.S. banking and other laws, and that servicemembers (and others) may establish accounts at such institutions in the United States. The Bureau does not know, however, whether any particular institution might be subject to a host country's banking laws and believes that this may vary depending on the host country and the agreement that allows the U.S. military installation to operate in that country. The Bureau understands that these institutions may offer account-to-account transfers to or from accounts that may be located in the United States or abroad, as well as cash-based transfers.

The Bureau understands that further guidance or clarity regarding the treatment of U.S. military installations abroad may be useful, particularly when cash transfers are sent to and from U.S. military bases abroad. For example, there could be confusion as to whether the Remittance Rule applies when a consumer in the United States sends a cash transfer to be picked up by a recipient at a financial institution on a foreign military base. Depending on whether the financial institution is deemed to be at a location in a ''foreign country'' or a ''State,'' the 2013 Final Rule may or may not apply. There might also be confusion about whether a cash transfer from a consumer on a foreign military installation to a recipient in the surrounding country would be subject to the rule, again depending on whether the foreign military installation is deemed to be in a ''State.''

The Bureau notes, however, that the application of the Remittance Rule could be different for transfers from accounts of persons stationed at U.S. military installations abroad. When a transfer is made from such an account, whether the sender is located in a State is determined by the location of the sender's account rather than the physical location of the sender at the time of the transaction. *See* comment 30(g)–1. Similarly, whether or not the Remittance Rule applies to transfers from the United States to accounts of different persons stationed at U.S. military installations abroad could differ, depending on the locations of those recipients' accounts. Thus, there may also be confusion as to whether the Remittance Rule applies when a transfer is sent from an account in the United States to an account located at a U.S. military installation abroad, to the extent such accounts exist. The Bureau lacks data regarding the number of servicemembers and other individuals who have accounts that are considered to be located on a U.S. military installation abroad.

As the Remittance Rule does not directly address transfers to and from foreign military installations and in light of the uniqueness of U.S. military installations, the Bureau seeks comment on whether and how it should clarify the application of the Remittance Rule to transfers to and from individuals and/or accounts located on U.S. military installations abroad.

The Bureau recognizes that each alternative (either considering the military installations to be in a State, or not) may entail providing the rule's consumer protections to some transfers instead of others. For example, if locations on these installations are treated as being located in a State for purposes of the rule, those sending remittance transfers from the United States to locations on the installation would not receive the consumer protections of the rule. On the other hand, those sending funds from locations on the installations to the surrounding foreign country would receive these protections. Of course, if locations on military installations are treated as being located within a foreign country, the reverse would be true: Transfers from the United States would be covered, but transfers to the surrounding foreign country would not be.

As a result, the Bureau seeks comment on whether or not it is appropriate or advisable to treat locations on U.S. military installations abroad as being located within a State or a foreign country for the purposes of subpart B of Regulation E. The Bureau also seeks data on the relative number of transfers sent to and from individuals and/or accounts located on U.S. military installations abroad so it can better understand the relative consumer protections of each approach. In addition, the Bureau seeks comment on the appropriateness of extending any clarification regarding U.S. military installations to apply to other U.S. government installations abroad, such as U.S. diplomatic missions.

Non-Consumer Accounts

The 2013 Final Rule applies only when the remittance transfer is requested by a consumer primarily for

[15] Under the 2013 Final Rule, a ''designated recipient'' is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country (§ 1005.30(c)) and a ''sender'' is a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient (§ 1005.30(g)).

[16] *Available at http://www.acq.osd.mil/ie/download/bsr/bsr2010baseline.pdf.*

personal, family, or household purposes. *See* § 1005.30(e) (definition of ''remittance transfer'') and (g) (definition of ''sender''). This qualification is similar to that of subpart A of Regulation E, which applies with respect to accounts only when they are established primarily for personal, family, or household purposes. *See* § 1005.2(b)(1) (definition of ''account''); § 1005.3 (coverage and definition of ''electronic fund transfer'').

The term account as defined in Regulation E does not include accounts held by a financial institution under a bona fide trust agreement, and the commentary to subpart A of Regulation E explains that certain types of accounts, including profit-sharing and pension accounts established under a trust agreement, escrow accounts, and accounts for accumulating funds to purchase U.S. savings bonds are also not accounts under Regulation E. § 1005.2(b)(3); comment 2(b)–3. Furthermore, EFTA, and thus subpart A of Regulation E, applies only to personal accounts, not business accounts. *See* § 1005.2(b)(1); 15 U.S.C. 1693a(2) (the term '' '[a]ccount' means a demand deposit (checking), savings deposit, or other consumer asset account . . . established primarily for personal, family, or household purposes[]'').[17]

When developing the Remittance Rule, the Board had initially proposed defining a sender to be a consumer in a State who requests a remittance transfer provider to send a remittance transfer to a designated recipient. 76 FR 29902, 29939 (proposed 12 CFR 205.30(f)). In response, several commenters suggested that the Bureau limit remittance transfers to those sent for personal, family, or household purposes. Although subpart A of Regulation E's applicability is generally limited to transactions to or from consumer asset accounts, that limitation is contained in the definition of ''account'' in § 1005.2(b), while the Remittance Rule applies to more than just account-based transfers (*e.g.,* cash transfers sent by a money transmitter). As a result, these commenters stated that an individual who requests a non-account based transfer for business purposes could arguably be a ''sender'' under the proposed rule.

To address these concerns, the Bureau adopted in the February 2012 Final Rule the present definition of ''sender'' in § 1005.30(g) to clarify that a sender is a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient. The Bureau had noted that this revision was consistent with § 1005.2(b) and therefore the 2012 February Final Rule would not apply to business-to-consumer or business-to-business transactions or to transactions that are not for personal, family or household purposes. The Bureau noted that, for example, a transfer requested by a sole proprietor on behalf of his or her company would not be covered by the rule. 77 FR at 6214.

Despite this clarification, the Bureau believes that additional clarification may still be needed regarding treatment of transfers from accounts, as defined in Regulation E. Specifically, the Bureau understands that there may be some confusion regarding whether the purpose of a transfer from an account is determined by the purpose for which the account was established or the purpose of the particular transfer. The Bureau believes that, for purposes of Regulation E, financial institutions often code accounts as being consumer accounts (generally subject to Regulation E) as opposed to business accounts (not subject to Regulation E). Therefore, it could be confusing if providers were required to treat some transfers from business accounts as consumer transactions subject to subpart B of Regulation E but not to subpart A of Regulation E. It might be similarly confusing if some transfers from consumer accounts were treated as business transactions not subject to Regulation E. At the same time, the Bureau believes that judged on a transaction-by-transaction basis some transfers from business accounts might be understood to be sent for personal, family, or household purposes, and that some transfers from consumer accounts may be understood to be sent for business purposes.

The Bureau thus believes it is appropriate to clarify that the 2013 Final Rule applies to transfers from accounts primarily used for personal, family, or household purposes, but not to transfers from non-consumer accounts. The Bureau believes that, at least since the 2013 Final Rule went into effect, remittance transfer providers have considered all transfers from business accounts to be outside the scope of the Rule. In addition, Bureau staff has provided similar informal guidance on this issue. The Bureau believes that the additional, proposed commentary will clarify that, like subpart A, subpart B of Regulation E does not apply to non-consumer accounts.

To clarify this in the commentary to the Remittance Rule, the Bureau is proposing to add comment 30(g)–2, which would explain that under § 1005.30(g), a consumer is a ''sender'' only where he or she requests a transfer primarily for personal, family, or household purposes. A consumer who requests a transfer primarily for other purposes, such as business or commercial purposes, is not a sender under § 1005.30(g). For remittance transfers from an account, the primary purpose for which the account was established determines whether a transfer from that account is requested for personal, family, or household purposes. A transfer that is sent from an account that was not established primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account owned by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g).

Section 1005.31 Disclosures

31(a) General Form of Disclosures

31(a)(2) Written and Electronic Disclosures

Although the 2013 Final Rule requires that disclosures required by subpart B generally be provided to the sender in writing, § 1005.31(a)(2), it does not specify what qualifies as a writing (except to state that written disclosures may be provided on any size of paper, as long as the disclosures are clear and conspicuous, *see* comment 31(a)(2)–2)). During its implementation and market monitoring efforts, the Bureau has come to understand that some senders request remittance transfers by sending a fax to a remittance transfer provider instructing the provider to process the transfer. Similarly, in some cases, the provider may send the required disclosures back to the sender via fax as well.

Although the Remittance Rule does not specifically address disclosures provided pursuant to § 1005.31 or .36 by fax, Bureau staff has noted in informal guidance that disclosures made by fax should be considered to be in writing under the Remittance Rule since such disclosures are generally received on paper in a form the sender can retain. The Bureau proposes to adopt this interpretation in the Remittance Rule.

[17] *See also Shames-Yeakel* v. *Citizens Fin. Bank,* 677 F. Supp. 2d 994, 1006–07 (N.D. Ill. 2009) (distinguishing two types of accounts under the EFTA); *Ironforge.com* v. *Paychex, Inc.,* 747 F. Supp. 2d 384, 402 (W.D.N.Y. 2010) (same).

Thus, the Bureau is proposing a new comment 31(a)–5, which would explain that, for purposes of disclosures required to be provided pursuant to § 1005.31 or § 1005.36, disclosures provided by facsimile transmission (*i.e.,* fax) are considered to be provided in writing and not subject to the additional requirements for electronic disclosures set forth in § 1005.31(a)(2).

The Bureau does not believe that treating faxes as writings will have any significant negative impact on the benefits consumers derive from the Remittance Rule both because many consumers have long communicated with remittance transfer providers via fax and those consumers accept faxes as a legitimate and efficient method of communication. Thus, the Bureau believes it appropriate to treat faxes as a writing for purposes of providing the disclosures required by subpart B of Regulation E.

31(a)(3) Disclosures for Oral Telephone Transactions

Section 1005.31(a)(3) permits providers to make pre-payment disclosures orally if the ''transaction is conducted orally and entirely by telephone'' and if certain other language and disclosure requirements are met. The Bureau recognizes that senders make requests to remittance transfer providers to send a remittance transfer in many different forms. For example, the Bureau understands that senders may send a provider a fax, email, or mailed letter requesting a remittance transfer, often because a telephone request or a visit to a branch or agent location is impractical (*e.g.,* because the sender is abroad and the provider requires a signature to authorize the transfer). In some circumstances, depending on the nature of the request and the location of the sender, providers have explained that it may be impractical for them to communicate back to the sender via that same means of communication because the sender is far away. For example, if a provider receives a mailed request to send a remittance transfer, a provider might find it impractical to send the pre-payment disclosure or combined disclosure to a sender via the mail and then wait for an acknowledgement from the sender, particularly when the disclosure of an exchange rate is involved.

Under the 2013 Final Rule, a remittance transfer provider may be uncertain as how to provide meaningful and compliant pre-payment disclosures to a sender that is neither physically present nor in ''real time'' communication with a provider's staff. Section 1005.31(e)(1) states that a provider must provide the pre-payment disclosure when the sender requests the remittance transfer, but prior to payment for the transfer. As a result, in such circumstances, senders seeking to initiate a remittance transfer by email, fax, or mailed letter may benefit from receiving pre-payment disclosures from the provider sooner via a telephone call rather than waiting for written or electronic disclosures to be sent. Additionally, providers may frequently need to call senders who send remote and/or time-delayed requests for remittance transfers to confirm various details such that the telephone call would occur in the ordinary course.

In response to inquiries concerning the application of the rule in these circumstances, Bureau staff has explained in informal guidance that it believes that the Remittance Rule's provisions allowing disclosure orally by telephone can, in some cases, be applied to remittance transfers that senders first initiate by fax, mail, or email if the requirements for disclosures for oral transactions are met. *See* § 1005.31(a)(3). Consistent with that informal staff guidance, the Bureau is now proposing to revise comment 31(a)(3)–2 to clarify further when a transaction is conducted orally and entirely by telephone under § 1005.31(a)(3). Comment 31(a)(3)–2 currently explains that § 1005.31(a)(3) applies to transactions conducted orally and entirely by telephone, such as transactions conducted orally on a landline or mobile telephone.

The Bureau is proposing to add to comment 31(a)(3)–2 that a remittance transfer provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical. For example, if a sender physically located abroad contacts a U.S. branch of the sender's financial institution and attempts to initiate a remittance transfer by first sending a mailed letter, further communication with the sender by letter may be may be judged impractical due to the physical distance and likely mail delays. In such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to § 1005.31(a)(3) when the provider treats that initial communication as an inquiry and subsequently responds to the consumer's inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

To accommodate this change, the Bureau is also proposing conforming edits to comments 31(a)(3)–1 and 31(e)–1. Comment 31(a)(3)–1 explains when a transaction is conducted partially by telephone and currently explains that a transaction cannot be started in person and then completed by telephone. The proposed change would make clear that comment 31(a)(3)–2 states an alternate situation. Unlike a transaction started in person and completed on the telephone, a transaction that a sender attempts to initiate with a method of communication that the provider believes would be impractical to use to complete the transaction, has not actually started, insofar as the provider treats that initial communication as an inquiry and otherwise conducts the transaction orally and entirely by telephone as contemplated in proposed comment 31(a)(3)–2.

As finalized in the May 2013 Final Rule, comment 31(e)–1 explains when a remittance transfer provider is required to provide pre-payment and combined disclosures to the sender. To accommodate the proposed revision to comment 31(a)(3)–2, the Bureau proposes to add to comment 31(e)–1 the following: For example, a sender that has sent an email, fax, mailed letter, or similar written or electronic communication has not requested a remittance transfer if the provider believes that it is impractical to treat that communication as a request and if the provider treats the communication as an inquiry and subsequently responds to that inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to process a request for a remittance transfer. *See* comment 31(a)(3)–2.

The Bureau recognizes that allowing oral disclosures in the cases contemplated by the proposed comments could result in senders sometimes not receiving written disclosures prior to authorizing a remittance transfer. The Bureau seeks comment on the relative tradeoffs of the various potential approaches to remittance transfers requested in these and similar circumstances.

31(b) Disclosure Requirements

31(b)(2) Receipt

In the February 2012 Final Rule, the Bureau stated that it was appropriate for remittance transfer providers to provide the Bureau's contact information on receipts required by the Remittance Rule, even in instances where the Bureau is not the provider's primary Federal regulator, as required by EFTA

section 919(a)(2)(B)(ii)(II)(bb). Therefore, § 1005.31(b)(2)(vi) in the 2013 Final Rule required a provider to disclose the contact information for the Bureau, including the Bureau's Web site and its toll-free telephone number. Although the rule did not specify which Bureau Web site should be provided on receipts, the Model Forms published by the Bureau all listed the Bureau's Internet homepage—*www.consumerfinance.gov. See* Model Forms A–31, A–32, A–34, A–35, A–39, and A–40 of appendix A.

The Bureau is in the process of creating a single page that contains resources relevant to international money transfers at *www.consumerfinance.gov/sending-money.* The Bureau is also developing a Spanish language Web site that will have resources relevant to international money transfers at *www.consumerfinance.gov/enviar-dinero.*[18] The Bureau believes that remittance transfer providers may want to use one of these Web sites, as appropriate, on receipts provided to senders so that senders can more easily find relevant Bureau resources or such resources in Spanish when the provider provides the receipt in Spanish. The Bureau seeks comment on whether it should create versions of this Web site in languages other than English and Spanish.

Therefore, the Bureau proposes to add comment 31(b)(2)–4 to explain how remittance transfer providers may satisfy the requirement to disclose the Bureau's Web site. The proposed comment would state that § 1005.31(b)(2)(vi) requires a provider to disclose the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau. Providers may satisfy this requirement by disclosing the Web site of the Consumer Financial Protection Bureau's homepage shown on Model Forms A–31, A–32, A–34, A–35, A–39, and A–40 of appendix A. Alternatively, providers may, but are not required to, disclose the Bureau's Web site as the address of a page on the Bureau's Web site that provides information for consumers about remittance transfers, currently, *www.consumerfinance.gov/sending-money.* In addition, providers making disclosures in a language other than English pursuant to § 1005.31(g) may, but are not required to, disclose a Bureau Web site that provides information for consumers about remittance transfers that is in the relevant language, if such Web site exists. For example, a provider that is making disclosures in Spanish under § 1005.31(g) may, but is not required to, disclose the Bureau's Web site on Spanish-language disclosures as the page on the Bureau's Web site that provides information about remittance transfers in Spanish, currently, *www.consumerfinance.gov/enviar-dinero.*

While disclosure of a Bureau Web site remains a requirement of the Remittance Rule, adoption of this proposed comment would not require remittance transfer providers to change existing receipts that mirror the Bureau's current model forms and link to *www.consumerfinance.gov* if the provider did not choose to make this change. Nevertheless, if this proposed comment is adopted, the Bureau would urge providers to consider adjusting their receipts to refer to these other Web sites, as appropriate, in the future and may eventually consider requiring providers to do so if, for instance, the Bureau were to conclude that other changes to the receipts were necessary.

To accommodate new proposed comment 31(b)(2)–4, the Bureau proposes to renumber current comments 31(b)(2)–4, –5, and –6 as comments 31(b)(2)–5, –6, and –7, respectively, without any other changes.

Section 1005.32 Estimates

32(a) Temporary Exception for Insured Institutions

As noted above, the EFTA, as amended by the Dodd-Frank Act, generally establishes that disclosures provided to senders by remittance transfer providers must state, among other things, the actual exchange rate and amount to be received by the designated recipient. EFTA section 919 provides two exceptions to the requirement, one of which is the temporary exception in EFTA section 919(a)(4), which expires on July 21, 2015. EFTA section 919(a)(4)(B), in turn, permits the Bureau to issue a rule to extend the temporary exception up to five more years, to July 21, 2020, if it determines that the termination of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers.

To implement EFTA section 919(a)(4), the Bureau adopted § 1005.32(a) in the February 2012 Final Rule. Section 1005.32(a)(1), as amended by the May 2013 Final Rule, provides that, when three conditions are met, the remittance transfer provider may provide estimates instead of actual amounts for the following: (1) The exchange rate used by the provider; (2) the total amount, in the currency in which the funds will be received, that will be transferred to the designated recipient inclusive of covered third-party fees imposed on the transfer amount, if any; (3) any covered third-party fees, in the currency in which the funds will be received by the designated recipient; and (4) the amount that will be received by the designated recipient, in the currency in which the funds will be received (*i.e.,* the amount received after deducting covered third-party fees).

Consistent with the statute, the three conditions that must be met before a remittance transfer provider can provide an estimate pursuant to the temporary exception are: (1) The remittance transfer provider cannot determine the exact amounts for reasons beyond its control; (2) the provider is an insured institution; and (3) the remittance transfer is sent from the sender's account with the institution. § 1005.32(a)(1). The Remittance Rule explains that insured depository institutions, insured credit unions, and uninsured U.S. branches and agencies of foreign depository institutions are considered ''insured institutions'' for purposes of the temporary exception.[19] § 1005.32(a)(3). Comment 32(a)(1)–1 explains that an insured institution cannot determine exact amounts ''for reasons beyond its control'' when a person other than the insured institution, or a person with which the insured institution has no correspondent relationship, sets the exchange rate or imposes a covered third-party fee. Comments 32(a)(1)–2 and –3 provide, respectively, examples of scenarios that qualify and fail to qualify for the temporary exception.

Related to § 1005.32(a), the Bureau adopted § 1005.32(c), enumerating the list of approaches remittance transfer providers can use to estimate exchange rates and fees pursuant to the temporary exception and the permanent exception. *See* § 1005.32(a) and (b)(1). Section 1005.32(c)(1) provides that with respect to the disclosure of exchange rates, the estimation methods are: (1) For certain remittance transfers sent via international ACH, the most recent exchange rate set by the recipient

[18] Although under development, the Bureau expects these pages to contain information regarding consumers' rights under the Remittance Rule, how consumers can use the receipts that they receive from providers, and how and when to lodge a complaint with the Bureau. The Bureau expects that the English and Spanish versions of this Web site will be available by the time that the Bureau finalizes this proposal.

[19] Accordingly, for purposes of the discussion of the temporary exception, remittance transfer providers eligible to rely on the temporary exception are generally referred to herein as ''insured institutions.''

country's central bank or other governmental authority and reported by a Federal Reserve Bank; (2) the most recent publicly available wholesale exchange rate and, if applicable, any spread that the provider or its correspondent typically applies to such a wholesale rate for remittance transfers for that currency; and (3) the most recent exchange rate offered or used by the person making funds available directly to the designated recipient or by the person setting the exchange rate. Section 1005.32(c)(3)(ii) provides the following estimation methods with respect to covered third-party fees imposed by intermediary institutions or the designated recipient's institution: (1) The provider's most recent remittance transfer to the designated recipient's institution; or (2) a representative transmittal route identified by the provider. Under § 1005.32(c), providers also have the option to use an alternative approach to estimate exchange rates and covered third-party fees so long as the designated recipient receives the same, or greater, amount of funds as compared to the amount disclosed to the sender pursuant to the Remittance Rule (catch-all method).[20]

General Findings From Interviews and Other Outreach Initiatives

To determine if the statutory predicate to extending the temporary exception exists, namely, that sunset of the exception would negatively affect insured institutions' ability to send remittance transfers, the Bureau endeavored to understand how insured institutions are providing remittance transfers from accounts, how, whether, when, and why they are using the temporary exception, and, to the extent insured institutions are using the exception, whether its expiration would negatively affect these institutions' ability to continue sending those remittance transfers for which they now use the temporary exception. The Bureau also sought to understand the impact on consumers of the temporary exception and its potential expiration.

As is explained above, the Bureau used information from a variety of sources to enhance its understanding of the above issues. These included interviews with banks and credit unions of various sizes, including community banks, nonbank money transmitters, nonbank service providers, correspondent banks, broker-dealers, and very large banks that send consumer remittance transfers on behalf of their retail customers and on behalf of other providers. The Bureau has not, however, spoken with all or a majority of entities involved in sending remittance transfers. The Bureau believes that despite the relatively small sample size of its informal interviews, the process undertaken provides significant insights. This is in part because the Bureau believes it spoke with entities responsible for sending or providing information to those entities sending a large portion of remittance transfers that could qualify for the temporary exception.

Nonetheless, the Bureau recognizes that this summary of market practice may not accurately represent all details of either how insured institutions send remittance transfers from accounts, or how other institutions send open network transfers. Thus, the Bureau seeks comments on the accuracy of its findings about how these providers send these remittance transfers as well as any insights or data on remittance transfers not reflected here. The Bureau also seeks comment regarding the consumer impact of providing estimated disclosures, including whether and the extent to which consumers have received estimates that are different from actual exchange rates and amounts received by the designated recipient, and other potential harm or hardships caused by the disclosure of estimates pursuant to the temporary exception.

Industry Implementation of the Remittance Rule

As noted earlier, the Bureau believes that the great majority of remittance transfers sent by insured institutions from accounts are wire transfers, which are typically considered to be open network transfers. The Bureau believes that ACH transfers are used by a limited number of insured institutions sending remittance transfers to a limited number of foreign countries, and that only a few insured institutions use closed networks for remittance transfers from accounts. These institutions typically send international wires as well.

With regard to wire transfers, the Bureau believes that the majority of insured institutions providing remittance transfers from accounts get the necessary information about exchange rates and covered third-party fees (hereinafter, the covered information) from service providers (including correspondent banks and nonbank service providers offering specialized international transfer services); those intermediary service providers, in turn, may rely on other entities to generate the information about covered third-party fees and, often, exchange rates.[21] Indeed, many insured institutions, and small institutions in particular, rely almost entirely on intermediary service providers to provide a complete solution for complying with the requirements of the Remittance Rule that integrates with the institutions' existing system.

The Bureau believes that the market for covered information has developed in such a way that much of the information EFTA section 919 and the 2013 Final Rule require providers to disclose is originally generated by a limited number of entities acting as information aggregators for providers that are sending wire transfers. The information generated by these information aggregators may be exact fee and exchange rate figures or it may be estimates of these amounts (presumably determined pursuant to one of the methods of estimation permitted by the Remittance Rule). In the remittance transfer market, these information aggregators may act as remittance transfer providers themselves (*i.e.,* they may originate remittance transfers for their own consumer clients), or may exclusively act as service providers.

Based on its outreach efforts, the Bureau understands that insured institutions that are remittance transfer providers have, for the most part, already invested significant time and energy in compliance with the requirements of the Remittance Rule whether they are providing exact disclosures or using the temporary exception. Moreover, most institutions reported that, where possible, they provided exact disclosures and only rely on the temporary exception where they deemed it necessary to do so. Indeed, the Bureau's understanding of the market indicates that insured institutions are typically disclosing exact amounts where they believe they are able to do so, even though they might have additional flexibility pursuant to the temporary exception to estimate some disclosed amounts in certain cases had they developed different compliance solutions. This is a significant change from what those same insured institutions generally did before the effective date of the 2013 Final Rule,

[20] As amended by the May 2013 Final Rule, providers are not required to use the estimation methods in § 1005.32(c)(3)(ii) or the catch-all method to estimate non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider when a provider chooses to disclose these amounts. Instead, pursuant to § 1005.32(b)(3), such estimates simply have to be based on ''reasonable sources of information.'' For a list of such information, *see* comment 32(b)(3)–1.

[21] For purposes of this discussion and unless otherwise noted, the term service provider refers to the entity that is generating the information and/or sending the remittance transfer.

when Federal law did not generally require price disclosures for remittance transfers. To the extent that insured institutions provided disclosures before October 28, 2013, we believe these institutions generally did not disclose, or have access to, all of the information required to be disclosed by the 2013 Final Rule.

Thus, to prepare for the Remittance Rule's effective date, many insured institutions (and/or the service providers on which they rely) had to engage in preparations including changes in operations and systems, to be able to provide the required disclosures. Such changes might have included, for example, changing their correspondent banking relationships, establishing or expanding other relationships with new foreign and domestic institutions, and enhancing their information gathering capabilities. Furthermore, the Bureau understands that because the temporary exception is set to expire less than two years after the effective date of the 2013 Final Rule absent Bureau action, some insured institutions (and/or service providers) have been investing in the development of long-term solutions that would allow them to provide senders with exact fee and exchange rate amounts for an increasing percentage of their remittance transfers. In sum, although significant work remains, the Bureau believes that the majority of the insured institutions the Bureau spoke with that are using the exception have been working and are continuing to work to provide accurate disclosures in as many cases as possible.

Notwithstanding the significant progress these institutions have made, insured institutions and their service providers report that they continue to face formidable challenges in attempting to expand their access to covered information. As a result and as explained in greater detail below, the Bureau believes that both small and large insured institutions continue to rely on the temporary exception for transfers from accounts when they believe fee and exchange rate information is not readily available. These institutions have indicated to the Bureau that they are unlikely to find an alternative to their reliance on the temporary exception by July 21, 2015, for at least some portion of the remittance transfers for which they currently use the temporary exception. The Bureau has preliminarily determined, therefore, that these institutions' ability to send remittance transfers would be negatively impacted if the temporary exception is not extended.

Current Industry Practice—Exchange Rates

As noted, the Bureau conducted outreach on how insured institutions disclose exchange rates where necessary and whether these insured institutions are using the temporary exception to do so. The Bureau understands that use of the temporary exception for estimating the foreign exchange rate is quite limited—most insured institutions and service providers told the Bureau that they are not using it, or that they are using it less frequently to estimate exchange rates than they do to estimate covered third-party fees. Most companies with which the Bureau spoke stated that when the 2013 Final Rule requires disclosure of an exchange rate, they are able to disclose an exact exchange rate in most cases and for most currencies in which their customers seek to send remittance transfers.

In addition, the Bureau has learned that, as a result of the 2013 Final Rule's disclosure requirements, a possibly substantial portion of insured institutions have changed their business practices: prior to the rule, those institutions sent out wires denominated in U.S. dollars, even when they knew those wires might be sent to accounts denominated in a foreign currency (and, thus, that the currency would be exchanged before being deposited into the recipient's account). As a result of the 2013 Final Rule, the Bureau believes some of these institutions are now offering to send wires denominated in the appropriate foreign currency by obtaining an exchange rate from service providers.

In general, remittance transfer providers either generate an exchange rate in-house or obtain one from a service provider (which may be one of the limited number of information aggregators described above or some other entity). Some insured institutions reported that service providers provide them with exchange rates that are fixed for a certain time (such as from a rate sheet provided at the start of each day). Other insured institutions stated that they receive exchange rates from the service provider at the time of each sender's request. In either of these cases, the insured institutions disclose to their customers an exact rate equal either to the rate provided by the service provider or that rate plus a spread applied by the insured institution. Thus, for these remittance transfers, providers cannot use (and do not need to use) the temporary exception to disclose an estimated exchange rate in most cases.

Nonetheless, the Bureau believes that there are a number of currencies that, in the view of any particular institution, are either (1) so thinly traded that insured institutions or their service providers find that purchasing such currencies for consumer wire transfers is impossible, impracticable, or economically undesirable, or (2) otherwise impracticable to purchase for other reasons, such as foreign laws barring purchase of that currency in the United States. While these include currencies used in countries currently covered by the permanent exception under § 1005.32(b)(1), they also include other currencies. The Bureau does not know all of these currencies, nor does it have information on whether and to what extent such currencies are viewed and treated differently by different providers.

In conversations with the Bureau, insured institutions and service providers explained that they believe that they may not have a viable mechanism to provide exact exchange rate information for remittance transfers received in the currencies that fall into either of the two categories described above. These entities indicated to the Bureau that typically, the volume of remittance transfers that they provide in those currencies is low, leading them to believe that it is impracticable to expend significant resources to disclose exact exchange rates for those remittance transfers, even if such efforts were possible. Therefore, the Bureau believes that without the temporary exception, some insured institutions would cease or limit remittances denominated in those currencies for which they are unable to use a set exchange rate, negatively affecting their ability to send remittance transfers to certain foreign locations.

Current Industry Practice—Covered Third-Party Fees

The Bureau also conducted outreach about how insured institutions sending wires via an open remittance transfer network disclose covered third-party fees and use the temporary exception to disclose estimates of covered third-party fees in some cases. Based on this outreach, the Bureau believes that a small number of insured institutions, mostly very large ones and including some institutions that act as information aggregators, are able to generate directly information about third-party fees. Most other insured institutions, however, obtain covered third-party fee information directly or indirectly from the limited number of entities described above as information aggregators.

For a particular institution, the information aggregator used to obtain fee information may be the same service provider used to obtain exchange rates, but this is not always the case. Nevertheless, we believe that information aggregator is generally only providing information for remittance transfers it sends, using specific methods and/or corridors; as such, in order for an insured institution to rely on the fee information provided by an information aggregator for a particular remittance transfer, the insured institution must also generally use the information aggregator to help process the remittance transfer.

In most cases, both the large institutions that generate covered third-party information directly and the information aggregators that provide such information for their clients either limit the fees that will be charged for a particular remittance transfer or obtain exact fee information for the transfer such that reliance on the temporary exception is unnecessary. In the alternative, they use the temporary exception. In many cases, the information aggregators are able to leverage relationships in order to facilitate the gathering (or control) of relevant information. These relationships can take various forms, as detailed below, and each information aggregator may use a combination of these methods. The effectiveness and prevalence of each method varies, and may depend on the presence of established relationships between the insured institution (or its service provider) and the other institutions involved in effecting the remittance transfer.

Overall, the Bureau understands that given the current methods insured institutions use to send remittance transfers, one reason they cannot disclose exact amounts in all cases is that they (or their service provider) cannot reliably control or know covered third-party fees in every case. The Bureau understands, however, that at least some of the parties involved in sending remittances from insured institutions are changing the methods they use to send such transfers, and in some cases, the payment systems themselves are evolving so that providers are increasingly able to disclose exact fees.

Limiting covered third-party fees. Information aggregators explained that there are several ways of limiting or eliminating covered third-party fees. When fees can be limited to a known amount or eliminated altogether, an exact figure of covered third-party fees (or no figure) can be disclosed and reliance on the temporary exception is unnecessary, and in some cases, disallowed under the 2013 Final Rule. Generally, there are two ways (which may be combined) to limit or eliminate covered third-party fees: developing relationships with foreign institutions or coding transfers in a way that instructs intermediary institutions to not deduct fees from the transfer amount.

One way in which information aggregators can limit the third-party fees charged in association with a particular remittance transfer is by entering into bilateral relationships with recipient institutions. One such relationship could exist between the insured institution (or its service provider) and a foreign institution hosting the institution's nostro account. Nostro accounts are accounts established by U.S. institutions with foreign banks; funds in the account are typically denominated in the currency of that country. An insured institution or its information aggregator can generally avoid covered third-party fees when depositing funds directly into its nostro account because it bypasses intermediary institutions. Thus, for situations in which the nostro accountholder is the designated recipient's bank, the provider or information aggregator could leverage its relationship to specify the fee terms that would apply to the transfer. As such, the provider would control the fee terms, and would thus not meet the conditions necessary to rely on the temporary exception. In cases where the recipient institution is not the nostro accountholder, the funds are transferred from the nostro account to the designated recipient's account using the recipient country's national payment system or the ultimate recipient bank may have a nostro account with the initial nostro accountholder. In some countries or areas, the national payments system may then limit or bar downstream covered third party fees.[22]

A second method of controlling covered third-party fees is by sending cover payments, a method in which the originator of the wire transfer sends payment instructions directly to the designated recipient's institution and asks that institution to credit the designated recipient the transfer amount. Under this method, the designated recipient's institution may receive the payment instructions before receiving the funds, which are cleared and settled separately through intermediary banks. Accordingly, intermediary fees would not be deducted from the payment, and as such, there would be no covered third-party fees that the originating institution would have to disclose. The Bureau further understands that entities may use cover payments to send remittance transfers received in foreign currency and U.S. dollars.

The cover payment method has certain limitations, however. One very large bank explained that it believes that it can only send cover payments to recipient entities with which it has a preexisting agreement or contractual relationship because absent this relationship, the bank cannot be sure that the cover payment instruction will be honored. Separately, several information aggregators referred to a ''long tail problem'': in their experience, expanding their networks is often a time-consuming, resource-intensive process because relationships must be established on a country-by-country, or institution-by-institution basis. These aggregators further indicated to the Bureau that it is unlikely that they would be able to establish relationships to reach every recipient financial institution or country by July 21, 2015, if the temporary exception expired. However, the institutions indicated that they would endeavor to use the additional time afforded by any extension of the temporary exception to expand the networks of recipient institutions with which they have relationships or pursue other alternatives that would allow them to ascertain actual fees in cases where they cannot do so today.

A third way in which the provider or information aggregator can attempt to exercise control over covered third-party fees is by coding its payment instructions in a way that prohibits other entities from deducting fees from the transfer. Such codes may be used in conjunction with other methods discussed herein. International wire transfers originating in the United States are generally processed between three types of payment and messaging systems. For transfers settled in U.S. dollars between United States and other financial institutions that are members of the relevant payment systems, entities can use one of two wire systems: either the Clearing House Interbank Payments System (CHIPS), operated by the Clearing House Association,[23] or the Fedwire Funds System (Fedwire), operated by the

[22] The Bureau lacks data on which national payments systems allow institutions to know the fees that will be imposed (or to know that no fees will be imposed) for such transfers.

[23] *See generally https://www.chips.org/about/pages/033738.php.*

Federal Reserve Banks.[24] For transfers between other entities or transfers settled in currencies other than U.S. dollars, SWIFT is the dominant international payments messaging system; the Bureau believes that the majority of international interbank messages use the SWIFT network.[25] When SWIFT is used, funds are generally settled through chains of bilateral correspondent relationships and/or national payment systems.

All three payment or messaging systems support a charge code that institutions may use to provide specific instructions about the way downstream entities handle the fees associated with a remittance transfer. For transfers sent via SWIFT, members have long been able to use the OUR charge code.[26] When the OUR charge code is used, the SWIFT member coding the transfer is instructing downstream institutions that receive the SWIFT message not to deduct a fee, but rather to bill all fees back to the sending institution after delivery of the transfer. Fees charged back to the originating institution are not required to be disclosed under the Remittance Rule because they are not deducted from the transfer amount.

The two U.S. wire systems, CHIPS and Fedwire, do not support the OUR charge code used by SWIFT. However, in reaction to the Remittance Rule, the Clearing House Association and the Federal Reserve Banks developed a charge code, CTO, that is intended to be the functional equivalent of the OUR charge code that can be used for institutions using Fedwire and CHIPS but only if the institution sending the transfer has a preexisting relationship with the entity receiving the transfer.[27]

Certain insured institutions with which the Bureau spoke indicated that they use the OUR code for most of their remittance transfers because they believe that doing so enables them to provide certainty for their customers insofar as use of the code is intended to prevent imposition of covered third-party fees. Some of the entities with which the Bureau spoke that use OUR for remittance transfers are passing on to their customers in the form of higher upfront prices the cost of the fees that are charged back to providers by intermediary institutions. Others are absorbing the extra expense without changing their prices but reported that they are continuing to analyze the impact of using the OUR charge code message on their pricing. Other institutions, however, indicated that they decided not to use OUR for most transactions due to the increased cost and that they either do not want to take on the additional costs or do not want to pass the costs on to their customers.

In addition to cost considerations, the Bureau understands that there may be additional challenges with using the OUR or CTO charge code instructions to avoid covered third-party fees. First, the Bureau understands that, though OUR can and is used in transfers to most destination countries and to most recipient institutions that are SWIFT members, some remittance transfer intermediaries may disregard the OUR or CTO charge codes and deduct a fee from the transfer amount despite the instruction. In the case of the OUR code, disregarding the instruction is a violation of SWIFT rules; however, SWIFT does not enforce violations and there is limited ability to seek redress if an institution violates an OUR instruction in a particular instance. As such, certain interview participants indicated that, while a bilateral agreement is not required when using the OUR charge code, the OUR instruction may be more effective where such a relationship, formalized through a Relationship Management Agreement, or RMA, is in place among the participating institutions.[28] The CTO code, in turn, is understood as a market convention; it is currently only honored if the sending and receiving institution have entered into a bilateral agreement.[29]

A third challenge is the difficulty of ensuring that the charge code instructions reach all the banks involved in the remittance transfer. For example, the Bureau understands that there are several countries in which the national financial messaging or payment system does not support the OUR charge code for transfers that are sent to institutions that are not SWIFT members. Additionally, the OUR charge codes may not be passed on to the next bank in the transmittal route if that bank is not a SWIFT member institution. Finally, certain smaller institutions that originate remittance transfers may not have the accounting systems in place necessary to account for OUR transactions when the charges are billed back to them from the intermediary institutions after the transfer is sent. Similar concerns exist in connection with the CTO charge code.

The Bureau asked interview participants whether they expected use of the OUR and CTO codes to expand in response to the new remittance rule disclosure requirements. Although the Bureau understands that the OUR code has long been used for some commercial wire payments, a number of providers and information aggregators were skeptical that the reliability of the OUR payment instruction will improve in the near future and some actually expected its reliability to decline as its use expanded. Indeed, these institutions reported that based on their analyses, they determined that use of the OUR code for all remittance transfers sent as wires was not feasible as a reliable method to reduce the use of the temporary exception. These institutions speculated that if use of the OUR charge code became widespread its effectiveness could lessen as more foreign banks would either ignore it or bill exorbitant amounts back to the originating institutions. Further, some remittance transfer providers indicated that, in their opinion, sending OUR payments is not in the best interest of the consumer. They asserted that entities originating the wire transfer will increase fees on some or all of their wire services to recoup the fees that intermediaries charged back to them and that generally consumers may overpay when the provider uses this method. At least one provider, however, surmised that a growth in the use of the OUR code method could normalize behavior and expectation in the international remittance transfer industry such that institutions will be more likely to honor the code as its use expanded.

Neither SWIFT nor providers or aggregators using the OUR code method provided the Bureau with concrete data on the prevalence or efficacy of the

[24] *See generally http://www.federalreserve.gov/paymentsystems/fedfunds_about.htm.*

[25] *See* Swift Payments Market Practice Group and the Clearing House Ass'n, White Paper on Dodd Frank Section 1073—Cross-border Remittance Transfers, v.3 (''SWIFT White Paper'') (Sept. 2013), *available at http://www.swift.com/resources/documents/PMPG_Dodd_Frank_1073_Whitepaper_v2.0.pdf.*

[26] SWIFT White Paper. Other methods include BEN and SHAR. A transfer coded BEN means that the beneficiary will pay all fees while a transfer coded SHAR means that the fees will be shared by the sender and the beneficiary.

[27] Federal Reserve Bank Services, Press Release (announcing that effective February 7, 2013, financial institutions that have agreements requiring special handling for remittance transfers sent using Fedwire should use the charge code CTO to identify a remittance transfer in which the originator pays all transaction charges) (Sept. 5, 2012), *available at https://www.frbservices.org/files/communications/pdf/fedwire/090512_dodd_frank.pdf. See also* SWIFT White Paper (''The use of OUR charge code instructions is fairly limited in US Dollar clearing between US financial institutions since CHIPS and Fedwire cannot carry a full OUR code.'').

[28] A RMA is an agreement established between SWIFT members. *See http://www.swift.com/products_services/relationship_management_application_overview.*

[29] *See http://www.frbservices.org/files/communications/pdf/fedwire/090512_dodd_frank.pdf.*

method as a way of controlling remittance transfer fees. As such, it is not clear at this point how expanded use of the OUR code would affect its usefulness as a possible tool for controlling, and therefore predicting, third-party fees associated with remittance transfers. Likewise, as the CTO charge code has only recently been introduced, interview participants were reluctant to speculate about using it to control covered third-party fees and whether and how necessary relationships have been established. Some suggested that a change in the CHIPS rules obligating members to honor the code (similar to the SWIFT member rules) would be necessary to ensure compliance with the CTO code without obligating entities to enter into numerous bilateral agreements. We seek comment on the efficacy of these charge codes and whether and when they are reliable methods of controlling the imposition of covered third party fees (and thus providing a remittance transfer disclosure without reliance on the temporary exception).

A small number of insured institutions with which the Bureau spoke use international ACH for some portion of their remittance transfers. International ACH products, such as the Federal Reserve's FedGlobal ACH Payments Service or services developed by individual financial institutions or service providers, may provide additional mechanisms to limit the fees that can be charged on a remittance transfer. Unlike institutions that receive wire transfers, institutions that receive FedGlobal ACH transfers are generally restricted, by the terms of the service, from deducting a fee from the transfer amount. FedGlobal and other ACH services may not currently be widely used by remittance transfer providers, however: According to a report of the Board of Governors of the Federal Reserve, at the end of 2012, 446 depository institutions offered FedGlobal services, representing about 5% of the institutions that originate ACH services.[30]

Institutions with which the Bureau spoke indicated continued reluctance to develop international ACH systems for a variety of reasons, including the following. First, international ACH services generally are developed on a country-by-country or region-by-region basis because they require agreements on protocol with foreign gateway providers and/or other foreign entities. As a result, the currently available international ACH services generally have a much more limited reach than wire services (even though those ACH services generally focus on popular destination countries). Second, insured institutions with which the Bureau spoke indicated that, unlike wire services, international ACH services are not a set of services that they already offered to consumers prior to the Remittance Rule. These institutions worried that developing an international ACH service, or signing onto someone else's ACH service, would involve start-up costs and/or changes in risk management protocol that at present outweigh the potential long-term cost savings (as well as any additional value of facilitating compliance with the Remittance Rule).

Finally, a small number of the biggest institutions with which the Bureau spoke have independently developed closed network remittance transfer products that resemble those closed-network solutions offered by money transmitters. Often designed with a focus on modest-sized transfers, these products include account-to-account, account-to-cash, and cash-to-account products. The institutions that have developed these products operate them independently or in partnership with other institutions, and can therefore know the exact fees and exchange rate that will be applied to specific remittance transfers. However, the closed networks currently in existence and used by insured institutions limit the dollar amount of most transfers, provide services to a limited number of countries and within those countries, to a limited number of pickup locations or recipient institutions, and as such cannot currently provide a complete solution for all of the locations to which insured institutions send remittance transfers. Further, setting up such a network takes significant time and resources. Accordingly, most of the institutions with which the Bureau spoke did not have such a system and have not planned to develop one prior to the planned July 21, 2015, expiration of the temporary exception as a method of resolving their reliance on the temporary exception.

In speaking to remittance transfer providers using various combinations of these methods, the Bureau understands that the methods vary in effectiveness and scope, and that entities' views of the feasibility or effectiveness of any particular method also vary. Interview participants indicated to the Bureau that many factors—including the efficacy of using the OUR charge code for transfers to a particular location or particular institution, concerns about lack of controls at a particular foreign bank, concerns about prudential regulators' reactions to relationships with foreign banks, sheer volume of institutions in the world and limited resources to reach them all, and the business case for investing in new protocols or payment systems—can affect the actual feasibility or effectiveness of a particular method, or an entity's view of such feasibility or effectiveness. Some institutions reported that they are attempting to address these issues by developing an increasing number of relationships with intermediary and recipient institutions; however, these institutions also stated that at present, it is very difficult and often impractical to establish such relationships with all banks in the world to which a U.S. consumer might seek to send a remittance transfer. Some institutions also indicated that the limited volume of international wire transfers they currently send to those corridors for which they cannot disclose exact fee amounts does not justify the expense of reaching these corridors using methods currently available for disclosing exact fees.

Obtaining covered third-party fee information. A number of information aggregators that are banks indicated to the Bureau that they have been able to obtain actual covered third-party fee information through the banks to which they offer correspondent banking services, as well as the banks that offer them correspondent services, and other efforts (such as independent research), but also reported that this information is not available for all institutions involved in all of the remittance transfers they or their partners send. Although some entities with which the Bureau spoke reported conducting internet research regarding intermediary bank fees, some aggregators also indicated that information available on the internet takes time and resources to find, may not be complete, and may be subject to change.

Entities with which the Bureau spoke stated that it is difficult to get fee information from other banks absent a correspondent relationship or assistance from a correspondent or to get information from another institution that might be deemed as a competitor. Specifically, insured institutions and others indicated to the Bureau that many United States and foreign banks treat such information as proprietary, and therefore, rarely make the information available to others upon request (let alone publish it on the Internet). *See* May 2013 Final Rule (78 FR at 30671). On the other hand, some consumer groups maintain that insured

[30] The Bd. of Governors of the Fed. Reserve Sys., Report to the Congress on the Use of the ACH System and Other Payment Mechanisms for Remittance Transfers to Foreign Countries, Apr. 2013.

institutions have had sufficient time since the 2013 Final Rule was first finalized to develop methods to determine actual fees in all cases, and that institutions could better utilize existing trade associations and other networks to complete this work.

Additionally, entities stated that even banks that have correspondent relationships with each other are unlikely to share fee information with each another because they may, in other circumstances, be competitors and typically do not share pricing information. In particular, it appears that some U.S. institutions are concerned that sharing fee information would raise antitrust concerns. Accordingly, participants indicated that these and similar forms of research have been difficult to complete on any comprehensive basis. *See* May 2013 Final Rule (78 FR at 30671).

Another method of learning fee information is to trace individual payments or to send test payments to gather transfer-specific data. Few information aggregators reported that they have tried this on a large scale. They reported that this is also a slow process that incurs some transaction fees. Additionally, some aggregators expressed doubts that gathered information will remain accurate for future transfers because of unknown variables or because different amounts of fees could be assessed on wire transfers sent to the same designated recipient institution, even though the transfers appear to have similar characteristics (*e.g.,* same transfer amount).

Relying on the temporary exception. A number of the insured institutions that spoke to the Bureau, but not all, indicated to the Bureau that they use the temporary exception when sending at least some of their wire transfers. As noted above, these remittance transfer providers stated generally that they strive to provide actual fee information and only use estimates in cases they deem such disclosure infeasible, such as when the transfer involves an entity with whom the U.S. bank has no direct relationship and the bank does not believe that the OUR charge code is a viable solution for that transfer.

Finally, the Bureau does note that some insured institutions reported (or their service provider reported to us about them) that they did not use the temporary exception for any of their transfers. Reasons for this varied. For example, some service providers used the OUR method with increased confidence that it could provide a comprehensive solution or that they did not send to those areas where OUR did not work. Notably, even these service providers doubted that the OUR method could provide a comprehensive solution for all remittance transfers sent by consumers in the United States. Other service providers reported that they could leverage nostro accounts around the world established primarily for the benefit of their corporate customers to send funds directly into the recipient country. The Bureau believes that it may be too early in the use of these methods to know if they are truly comprehensive or able to allow disclosure of exact amounts for all remittance transfers.

The frequency of reliance on the temporary exception for disclosure of intermediary fees varied greatly amongst those using the exception. Some did not use it at all while those that did reported that they used the exception for a varying range of their transfers: From 5 percent to as much as 50 to 60 percent of remittance transfers although, to the extent data was reported to the Bureau during its interviews, most insured institutions with which the Bureau spoke reported using the exception for far fewer than half of their remittance transfers. The Bureau lacks data at this time as to the overall industry practice although it anticipates that the soon-to-be-available FFIEC Call Report data will provide helpful detail on this point. The Bureau believes that one factor that could explain the substantial variance among institutions is the destination countries to which particular providers' customers send transfers and the size of the providers' correspondent networks. Even when an institution's reliance on the temporary exception is for a relatively small portion of its (or its customers') remittance transfers, the Bureau understands that the institution may use estimates for remittance transfers sent to a number of countries. These institutions indicated that they did not believe that it was feasible either to get actual fee information or to send wires in a way that controls for covered third-party fees by July 21, 2015, for remittance transfers to those beneficiary banks for which they are today using the temporary exception.

As noted above, the Bureau recognizes that this summary of market practice and consumer impact may not accurately represent all details of how remittance transfer providers send remittance transfers from accounts and, thus, the Bureau seeks comments on whether there are other methods of complying with the requirement to disclose covered third-party fees when sending such remittance transfers or whether other methods of sending transfers altogether might allow providers to comply with the Remittance Rule without reliance on the temporary exception. For example, the Bureau seeks comment on whether international ACH products could grow beyond their current, limited use, and develop into comprehensive solutions enabling insured institutions to provide exact disclosures for transfers from accounts. The Bureau also seeks comment on whether various types of closed networks might also play a role in the development of a solution to the issues outlined above. Finally, the Bureau seeks comment on whether, over time, additional competition amongst service providers will further motivate service providers to develop solutions that would eliminate a need to rely on the temporary exception in more cases.

The Temporary Exception's Impact on Consumers

Although EFTA section 919(a)(4) provides that the Bureau's determination to extend the temporary exception should hinge on the exception's effect on the ability of remittance transfer providers to send transfers without the exception, the Bureau has also considered the impact of the temporary exception and its potential expiration on consumers. Specifically, the Bureau solicited input from several consumer groups whose constituents send remittance transfers. Many of these groups asserted that financial institutions have had sufficient time, and currently hold sufficient resources, to disclose exact figures in all cases. Citing a dearth of specific data on the effect of estimates on consumer experience, these representatives expressed concern that estimates could be wide-ranging and/or inaccurate. At least one of the groups also urged the Bureau to narrowly tailor the temporary exception, perhaps to allow it to be used only for remittance transfers to certain countries not already subject to the permanent exception.

At this point, there is little information that has been developed about the way in which estimation of certain fees and exchange rates associated with a remittance transfer impacts consumers. For example, the Bureau does not have data on the relative accuracy of the estimates provided, nor on whether such estimates are on average higher or lower than the actual fees and rates associated with transactions. Although the Bureau did speak with several consumer groups, the Bureau also does not know the extent to which receipt of an estimate impairs a consumer's ability to rely on disclosures provided. The Bureau seeks comment on the impact of

the use of estimates on consumers as well as the potential impact of an extension of the temporary exception, including whether consumers find estimates to be relatively accurate and the impact of estimates versus actual amounts.

The Bureau's Proposal

Based on information the Bureau has gathered regarding the Remittance Rule in general, including through outreach to industry and consumer groups, review of prior comment letters and other efforts, and from its recent interviews with remittance transfer providers, service providers, and consumer groups regarding the temporary exception, the Bureau has reached a preliminary determination that the expiration of the temporary exception would negatively impact the ability of insured institutions to send remittance transfers.

As discussed above, it appears that a number of insured institutions are relying on the temporary exception to comply with the 2013 Final Rule for some portion of their remittance transfers either to disclose covered third-party fees, exchange rates, or both. When, as remittance transfer providers, they send wire transfers from accounts, these institutions (and/or their service providers) rely (in varying degrees) on action by entities that they do not control and that may not always provide any or accurate information regarding the fees and/or exchange rates that they apply. Thus, in at least some cases, the insured institutions are unable to determine, with accuracy, the actual amounts of the fees and/or exchange rates for the remittance transfers that they provide. Further, it appears that the insured institutions that are in the best position to ascertain exact fee information (*i.e.,* the information aggregators that are insured institutions) do not believe that they could continue sending wire transfers and find an alternative to relying on the temporary exception for all of those corridors for which they are using the exception by July 21, 2015.

Accordingly, the Bureau believes that if the temporary exception terminates on July 21, 2015, it could cause some of these institutions to stop offering remittance transfers to at least some of the foreign destinations to which they currently send remittance transfers using estimated disclosures. The Bureau further believes that a decision by service providers to stop offering remittance transfers to certain foreign destinations may also negatively impact the ability of a number of insured institutions that rely on those service providers to send remittance transfers and disclose covered third-party fees.[31]

With respect to the extension of the temporary exception for disclosure of exchange rates, the Bureau believes that some insured institutions are using the temporary exception for some portion of their remittance transfers. Additionally, similar to the disclosure of intermediary fees, it appears that a number of smaller institutions are relying on either service providers or larger institutions acting as information aggregators to provide their senders with exchange rate information. It also appears that for the remittance transfers for which providers are currently using the temporary exception, a number of institutions may not find a way to provide actual exchange rates for certain currencies by July 21, 2015. The Bureau believes that some portion of these institutions may stop offering remittance transfers to either all or some number of foreign destinations where they are currently disclosing estimated exchange rates.

For the reasons given above, the Bureau makes a preliminary determination that the expiration of the temporary exception on July 21, 2015, would negatively affect the ability of insured institutions to send remittance transfers. Accordingly, the Bureau believes that it is necessary and proper to additionally exercise its authority under EFTA section 919(a)(4)(B) to amend § 1005.32(a)(2) to propose to extend the sunset of the temporary exception to July 21, 2020.

Notwithstanding this preliminary determination, the Bureau will continue to dialogue with key stakeholders regarding possible long-term solutions to facilitate increased accuracy in remittance transfer disclosures while preserving a broad market for remittance transfers sent from accounts at insured institutions. The Bureau expects providers to continue to work towards providing exact disclosures of exchange rates and covered third-party fees in all cases where disclosure is required. If the Bureau finalizes this proposal and the expiration of the temporary exception is extended to July 2020, the Bureau expects that reliance on the temporary exception will decrease going forward as the industry continues to work towards improving solutions that allow for exact disclosures. The Bureau also expects to continue to review Call Report data each quarter to understand how use of the temporary exception changes over time, as well as to continue to engage with insured institutions and service providers to learn more about how key players are working towards the eventual expiration of the exception and to confirm that the providers are not abusing the exception. Furthermore, as the Bureau noted in the May 2013 Final Rule (in the context of its decision to eliminate the requirement to disclosed foreign taxes and certain recipient institution fees), it intends to monitor whether the development and availability of covered third-party fee and exchange rate information becomes more feasible in the future. 2013 Final Rule (78 FR at 30677).

The Bureau solicits comment on the proposed extension of the temporary exception. Additionally, the Bureau solicits comment on its proposed determination that the expiration of the temporary exception would have a negative impact on the ability of insured institutions to send remittance transfers, as well as the magnitude of the impact. The Bureau also seeks comment on whether it should extend the exception for a period less than five years and/or whether it should place other limits on the use of the temporary exception, such as to allow only those institutions at or below a certain asset size to take advantage of the exception.

As stated above, FFIEC Call Report data relevant to various aspects of remittance transfer services offered by certain reporting financial institutions will become available after May 15, 2014. The Bureau notes that this information will include data on the frequency with which insured institutions use the temporary exception.[32] The Bureau may use the data to supplement its understanding of how institutions are using the temporary exception.

The Bureau also recognizes that that more information exists regarding the potential consumer impact of either the expiration or the extension of the temporary exception. The Bureau thus invites comment on the potential consumer impact of either the expiration of the temporary exception on July 21, 2015, or the proposed extension of the exception to July 21, 2020.

[31] The Bureau learned from many smaller institutions that they preferred to utilize compliance solutions that interfaced directly with other existing systems. Switching providers could require systems changes that impact other parts of the institution.

[32] Data can be accessed at *https://cdr.ffiec.gov/public/*.

Section 1005.33 Procedures for Resolving Errors

1005.33(a) Definition of Error

1005.33(a)(1) Types of Transfers or Inquiries Covered.

Section 1005.33(a) defines what subpart B of Regulation E considers to be an error in connection with a remittance transfer. One of these errors is the failure to make funds available to a designated recipient by the date of availability stated in the disclosure provided to the sender under § 1005.31(b)(2) or (3) for the remittance transfer, unless the failure occurs due to certain listed reasons. *See* § 1005.33(a)(1)(iv). One of the reasons listed is for delays related to the remittance transfer provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311, *et seq.,* Office of Foreign Assets Control requirements, or similar laws or requirements. § 1005.33(a)(1)(iv)(B). As the Bureau explained in the 2012 February Final Rule, it did not intend for this provision to apply to delays that occur in the ordinary course, such as delays related to routine fraud screening procedures. 77 FR at 6252.

To clarify the application of this provision, the Bureau is proposing to revise § 1005.33(a)(1)(iv)(B) so that it would expressly apply only to delays related to individualized investigation or other special action by the remittance transfer provider or a third-party as required by the provider's or other entity's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.,* Office of Foreign Assets Control requirements, or similar laws or requirements. The Bureau believes that this proposed change is in accordance with the original intent of this provision but proposes this clarification to remove any ambiguity. As the Bureau noted in the 2012 February Final Rule, it believes that individualized investigation or other special action could include a need to go back to the original sender for additional information related to the remittance transfer.

To further clarify which delays would fall under this exception, the Bureau is proposing to add comment 33(a)–7, which would explain that under § 1005.33(a)(1)(iv)(B), a remittance transfer provider's failure to deliver a remittance transfer by the disclosed date of availability is not an error if such failure was caused by a delay related to a necessary investigation or other special action necessary to address potentially suspicious, blocked or prohibited activity in accordance with the BSA, OFAC requirements, or similar laws or requirements. For example, no error occurs if delivery of funds is delayed because the provider's fraud screening system flags a remittance transfer to a designated recipient whose name is similar to the name of a blocked person under a sanctions program, and further investigation is needed to determine that the designated recipient is not actually a blocked person. Similarly, no error occurs if delivery of funds is delayed because the correspondent bank to which the provider forwards the remittance transfer identifies the transfer as similar to previous fraudulent activity and action by a correspondent or the provider is necessary to proceed. However, if a delay is caused by ordinary fraud screening or other screening procedures, where no potentially fraudulent, suspicious, blocked or prohibited activity is identified and no further investigation or action is required, the exception in § 1005.33(a)(1)(iv)(B) would not apply. The Bureau is seeking comment on whether the proposed examples and description accurately reflect industry practice and/or provide sufficient guidance on the types of permissible delays.

Finally, to reflect the insertion of new comment 33(a)–7, the Bureau proposes to renumber existing comments 33(a)–7 through –10 as comments 33(a)–8 through –11, respectively.

1005.33(c) Time Limits and Extent of Investigation

Section 1005.33(c)(2) implements EFTA section 919(d)(1)(B) and establishes procedures and remedies for correcting an error under the Remittance Rule. In particular, where there has been an error under § 1005.33(a)(1)(iv) for failure to make funds available to a designated recipient by the disclosed date of availability, § 1005.33(c)(2)(ii) generally permits a sender to choose either: (1) To obtain a refund of the amount tendered in connection with the remittance transfer that was not properly transmitted, or an amount appropriate to resolve the error, or (2) to have the remittance transfer provider resend to the designated recipient the amount appropriate to resolve the error, at no additional cost to the sender or designated recipient. However, if the error resulted from the sender providing incorrect or insufficient information, § 1005.33(c)(2)(iii) requires a provider to refund or, at the consumer's request, reapply to a new transfer, the total amount that the sender paid to the provider and it permits the provider to deduct from this amount fees actually imposed and, where not otherwise prohibited by law, taxes actually collected as part of the first unsuccessful remittance transfer attempt.

As drafted, the Bureau believes that the 2013 Final Rule may be ambiguous with respect to whether, in instances in which the sender provided incorrect or insufficient information the remittance transfer provider must always refund its own fee or whether it has the option of not doing so. *See* § 1005.33(c)(2)(iii). While comment 33(c)–12 explains that in such circumstances, the provider is required to refund its own fees but not the fee imposed by a correspondent (unless that fee will be refunded to the provider by the correspondent), the Bureau believes it appropriate to remove any ambiguity that might exist in the corresponding text of § 1005.33(c)(2)(iii).

The Bureau also proposes to clarify what should happen when an error occurs (for any reason) pursuant to § 1005.33(a)(1)(iv), but the funds are ultimately delivered to the designated recipient before the remedy is determined. If the remittance transfer is delivered late but before the remedy is determined, the provider should be not be required to refund the amount delivered to the designated recipient or apply those funds towards a new transfer (as those funds have already been delivered). For example, consider a situation in which a sender sends $100 to a designated recipient and the provider charges a $10 fee and there are no other non-covered third-party fees or foreign taxes deducted from the transfer amount (the sender pays a total of $110 to the provider and $100 is delivered to the designated recipient after the disclosed date of availability). If $100 is deposited into the designated recipient's account after the date of availability, the Bureau proposes to clarify that the only remedy required would be a refund of the $10 fee to the sender. In this situation, it is not practical to refund the $100 to the sender so that he or she can resend the transfer since it was already delivered. Instead, § 1005.33(c)(2)(iii) (if the error occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer) or (c)(2)(ii) (if the error occurred for another reason), require the provider to refund its $10 fee; after that the amount appropriate to resolve the error should be zero. To require a refund of the $100 would, in essence, result in a windfall (insofar as the $100 was received by the designated recipient).

To clarify these two issues, the Bureau first proposes to revise

§ 1005.33(c)(2)(iii) to state that in the case of an error under § 1005.33(a)(1)(iv) that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by § 1005.33(c)(2)(ii)(A)(*1*) and (c)(2)(ii)(B) within three business days of providing the report required by § 1005.33(c)(1) or (d)(1) except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempts except that the provider shall not deduct its own fee.

To further clarify what remedies must be provided for all errors that occur pursuant to § 1005.33(a)(1)(iv), the Bureau also proposes to modify comment 33(c)–5, to add language explaining that when the amount that was disclosed pursuant to § 1005.31(b)(1)(vii) was received by the designated recipient before the provider must determine the appropriate remedy for an error under § 1005.33(a)(1)(iv), no additional amounts are required to resolve the error after the remittance transfer provider refunds the appropriate fees and taxes paid by the sender pursuant to § 1005.33(c)(2)(ii)(B) or (c)(2)(iii), as applicable.

VI. Proposed Effective Date

The Bureau proposes that all of the changes proposed herein take effect thirty days after publication of a final rule in the **Federal Register**. The proposed change to the temporary exception does not have a practical effect until after July 21, 2015, so an effective date before the expiration would provide for continuity. The other proposed changes generally reinforce current Bureau guidance on interpretation of the 2013 Final Rule. Thus, the Bureau believes that remittance transfer providers should not need to adjust their practices to align them with those proposed herein. The Bureau seeks comment on whether these changes to the 2013 Final Rule should take effect in thirty days after publication of a final rule in the **Federal Register** or if a later effective date is more appropriate.

VII. Section 1022(b)(2) Analysis

A. Overview

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts [33] and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.[34]

The proposal would amend the 2013 Final Rule (or, the Remittance Rule) that took effect on October 28, 2013 and which implements section 1073 of the Dodd-Frank Act regarding remittance transfers. First, the Bureau proposes to extend a temporary exception in the 2013 Final Rule that permits insured depository institutions and insured credit unions to estimate the exchange rate and covered third-party fees under specified circumstances. Second, the Bureau proposes several clarificatory amendments and technical corrections to the Remittance Rule. These provisions regard: The application of the Remittance Rule to transfers to and from locations on U.S. military installations abroad; the treatment of transfers from non-consumer accounts; the treatment of faxes; when a provider may treat a communication regarding a potential remittance transfer as an inquiry; the Web site addresses to be disclosed on consumer receipts; and error resolution provisions related to delays and remedies.

The analysis below considers the benefits, costs, and impacts of the provisions described above against the baseline provided by the 2013 Final Rule. With respect to such provisions, the analysis considers the benefits and costs to senders (consumers) as well as remittance transfer providers (covered persons). The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to benefits, costs, and impacts and an appropriate baseline.

The Bureau notes at the outset that the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule. The Bureau believes that quantification of the potential benefits, costs, and impacts of the proposed provisions is not possible. There are limited data on consumer behavior, which would be essential for quantifying the benefits or costs to consumers. For instance, information about the accuracy of estimates for exchange rates and covered third-party fees could help inform the Bureau of the potential cost to consumers of extending the temporary exception to July 21, 2020, in terms of the benefit foregone of receiving accurate information. There is still limited data about the remittance transfer market such that the Bureau cannot presently quantify the potential benefits, costs, and impacts of the proposed provisions. Nonetheless, the Bureau recognizes that available data about the remittance transfer market has increased significantly since the initial issuance of the Remittance Rule. As discussed above, the data collected by the NCUA regarding remittance transfers through its Call Report and Credit Union Profile Forms provide a valuable set of responses about credit unions. For example, credit union respondents are required to indicate their international remittance transfer volume. As discussed in the Section-by-Section Analysis, the Bureau used the responses and estimated that credit unions sent less than 1% the number of international money transfers in 2013 as did money transmitters.

The FFIEC Call Report data the Bureau expects to be made available during the comment period is expected to contain responses about the temporary exception utilization rate by insured depository institutions. Although the Bureau does not believe that the utilization rate should be determinative of the Bureau's ultimate decision with respect to whether to extend the temporary exception, utilization rate data may affect the Bureau's assessment of the impact on depository institutions with respect to the extension of the temporary exception.

B. Potential Benefits and Costs to Consumers and Covered Persons

1. Extension of the Temporary Exception to July 21, 2020

The proposed rule would provide that remittance transfer providers may estimate exchange rates and covered third-party fees until July 21, 2020 if (1) the provider is an insured depository institution or credit union; (2) the remittance transfer is sent from the sender's account with the provider; and

[33] Section 1022(b)(2)(A) of the Dodd-Frank Act directs the Bureau, when prescribing a rule under the Federal consumer financial laws, to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[34] The Bureau also solicited feedback from other agencies with supervisory and enforcement authority regarding Regulation E and the proposed rule.

(3) the provider cannot determine the exact amounts for reasons outside of its control.[35] To implement the Dodd-Frank Act, the 2013 Final Rule provides that the exception sunsets on July 21, 2015. But the Dodd-Frank Act also authorizes the Bureau to extend the exception up to July 21, 2020 if the Bureau determines that the termination of the exception would negatively affect the ability of insured depository institutions and credit unions to send remittance transfers to locations in foreign countries. EFTA section 919(a)(4)(B). This analysis considers the benefits, costs, and impacts of extending the exception against a baseline of allowing the exception to expire on July 21, 2015.

To determine if the statutory predicate to extending the exception exists, namely, a negative effect on remittance transfers caused by a baseline of allowing the exception to expire on July 21, 2015, the Bureau endeavored to understand how insured depository institutions and credit unions are providing remittance transfers without using the temporary exception and when they are using the temporary exception. The Bureau understands that many insured institutions have already taken significant steps toward disclosing actual exchange rates and covered third-party fees when they believe they are able to do so, even though they might have additional flexibility pursuant to the temporary exception to provide estimates instead. But it appears that both small and large insured institutions rely on the temporary exception for remittance transfers from accounts in which they believe covered third-party fee and/or exchange rate information are not readily available and for which they can otherwise satisfy the criteria for using the temporary exception. Further, these institutions have generally indicated to the Bureau that they are unlikely to find an alternative to their reliance on the temporary exception by July 21, 2015, for at least some portion of the remittance transfers for which they currently use the temporary exception. To the extent that institutions believe that finding an alternative by July 21, 2015 is possible, the Bureau believes that a number of institutions view the associated cost as a significant burden, even if such cost falls short of being prohibitive in all cases.

The information the Bureau has gathered thus far with respect to how insured depository institutions and credit unions are or are not using the temporary exception, along with the Bureau's other efforts to understand industry's compliance with the requirements of the Remittance Rule, have provided the Bureau with a basis to make a preliminary determination that if the exception sunsets on July 21, 2015, its expiration would negatively impact the ability of insured institutions to send remittance transfers. The Bureau recognizes that its description of market practices may not be accurate in all respects, and invites comments to further its understanding of such practices.

a. Benefits and Costs to Consumers

As the Bureau stated in its original impact analysis related to the adoption of the temporary exception, relative to accurate disclosures, estimated disclosures strike a different balance between accuracy and access, offering less accuracy but potentially preserving greater access. 77 FR at 6274. The Bureau believes that extending the temporary exception would benefit those consumers who use insured institutions to send remittance transfers to countries or institutions to which some insured institutions would cease providing remittance transfer services, if the exception were to sunset on July 21, 2015. To the extent an insured institution would curtail certain services because it would no longer be able to rely on the temporary exception, and the ability to rely on the temporary exception is instrumental in that institution's decision to continue to offer those services, extending the temporary exception would benefit a consumer using that institution to send remittances to a destination that could be potentially impacted. In that case, the extension would preserve the consumer's ability to continue using that particular institution as the consumer's remittance transfer provider.

Extending the temporary exception would also provide benefits to consumers in the form of avoiding increased prices if providing the actual information (as opposed to estimates) would require insured institutions or their service providers to take costly steps to provide that information and those institutions decide to pass those costs to the consumers. In other words, although the consumers would receive actual information, they may have to pay more to send a remittance transfer in some cases.

Providing estimates instead of actual information has costs for consumers as well. Disclosures that accurately reflect actual covered third-party fees and exchange rates would make it easier for a consumer to know whether a designated recipient is going to receive an intended sum of money, or how much the consumer must send to deliver a specific amount of foreign currency to a designated recipient. Accurate disclosures would also make it easier for consumers to compare prices across providers, via, for example, prepayment disclosures. Extending the temporary exception would impose a cost on consumers in the form of these foregone benefits because they would continue to receive estimated disclosures in some cases. Such cost could be significant if the estimated disclosures they receive from insured depository institutions and credit unions tend to be inaccurate. However, the Bureau lacks data on how often estimates of exchange rates and covered third-party fees that insured institutions disclose to consumers pursuant to the temporary exception tend to be inaccurate, and the degree of the inaccuracy, if any. Additionally, the Bureau believes there would be a cost associated with an extension of the temporary exception in that if consumers believe that they cannot rely on estimated disclosures and thus do not rely on them to, for example, compare prices across providers. However, the Bureau also lacks data on whether consumers that receive estimated disclosures perceive such information to be unreliable.

b. Benefits and Costs to Covered Persons

As noted above, the Bureau believes that many insured institutions have made significant progress toward disclosing exact amounts. But at the same time, it appears that both some small and some large insured institutions rely on the temporary exception for some portion of their transfers. For these institutions, with respect to the segment of their business for which they rely on the temporary exception and for which they are unable to find a practical or cost-effective alternative to the temporary exception, the Bureau believes that a potential benefit associated with extending the temporary exception would be that it would allow them to avoid the cost associated with losing that segment of their business. The Bureau acknowledges that the magnitude of this benefit may be related to how big that segment of the business is for an insured

[35] As noted above in the Section-by-Section Analysis, the temporary exception does not apply to broker-dealers. However, SEC staff has issued a no-action letter stating that it will not recommend an enforcement action under Regulation E against broker-dealers that provide disclosures consistent with the requirements of the temporary exception. *See http://www.sec.gov/divisions/marketreg/mr-noaction/2012/financial-information-forum-121412-rege.pdf.*

institution. Based on the Bureau's outreach efforts, the Bureau has made a preliminary finding that it varies greatly with respect to covered third-party fees. The Bureau also acknowledges that the magnitude of this benefit may only be marginal with respect to the disclosure of exchange rates. As noted above, the Bureau's current understanding is that use of the temporary exception for estimating the applicable foreign exchange rate is quite limited. An additional benefit of extending the temporary exception may be that it could provide additional time for insured institutions to search for efficient and cost-effective ways to disclose actual exchange rates and covered third-party fees.

The Bureau believes that in some circumstances, the additional costs that insured institutions may have to incur to provide exact disclosures may not be so prohibitive such that an insured institution would curtail sending remittance transfers to certain destinations altogether, although this might be possible in some cases. The Bureau notes that entities that currently rely on the temporary exception generally told the Bureau that they believe that the expiration of the temporary exception on July 21, 2015 would create significant costs for them, but that they have not evaluated such costs such that they could provide the Bureau with actual or estimated numbers. The Bureau believes that there would not be a cost to insured institutions of extending the exemption because it would not require them to alter current practices. To the extent that letting the temporary exception expire on July 21, 2015 would raise transaction costs for insured institutions such that it would lead to some insured institutions to no longer offer remittance transfer services to certain destinations, money transmitters that offer services to those destinations could benefit from less competition.

2. Technical Corrections and Clarifications

In addition to the proposed extension of the temporary exception, the Bureau also considers potential benefits and costs to consumers and remittance transfer providers of the several technical corrections and clarifications proposed by the Bureau. Generally, except for the clarification regarding the application of the Remittance Rule to transfers to and from locations on U.S. military installations abroad, the Bureau believes that none of the proposed technical corrections or clarifications will materially alter the benefits and costs to consumers and covered persons of the Remittance Rule. Further, because the technical corrections and clarifications proposed by the Bureau are intended to remove ambiguity, the Bureau believes that they may actually provide some benefit to both consumers and covered persons in that they could increase the clarity and precision of the Remittance Rule and help to reduce compliance costs.

As discussed above, the Remittance Rule does not expressly address transfers to and from U.S. military installations within foreign countries and because the Bureau believes that there is a potential for confusion, the Bureau is considering clarifying the application of the Remittance Rule to transfers to and from locations on these installations. If the Bureau were to treat such locations as being in a State, transfers sent from the United States to those locations would not be subject to the Remittance Rule, and there would be benefits to covered persons of not having to comply with the requirements of the rule, while there would be costs to consumers of not receiving the consumer protections of the rule. The costs and benefits would be reversed if the Bureau decides to treat locations on U.S. military installations as not being in a State.

The Bureau lacks data on current practices, particularly information about the volume and size of transfers sent by consumers in the United States to recipients located on U.S. military installations within foreign countries, and the volume and size of transfers being sent from locations on such installations to the surrounding foreign country or other foreign countries. As the Bureau lacks such data, it cannot evaluate the relative benefits and costs of clarifying the application of the Remittance Rule to locations on U.S. military installations within foreign countries on covered persons and consumers. The Bureau seeks comment generally on the relative costs and benefits of the proposed clarification on consumers and covered persons.

The Bureau is also proposing a clarification to the commentary related to the definition of ''sender'' to clarify the application of the Remittance Rule to transfers sent from non-consumer accounts. The proposed clarification would provide that if a transfer is sent from an account that is not used primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account owned by a business entity, the Remittance Rule would not apply. The proposed clarification would also make clear that transfers from consumer accounts are deemed to be sent for a personal, family, or household purpose. The Bureau believes that remittance transfer providers are currently treating transfers from non-consumer accounts as being outside of the scope of the Remittance Rule, and transfers from consumer accounts as being within the scope of the rule. Thus, the Bureau does not foresee any material impact on the cost or benefits from this proposed clarification.

The Bureau further proposes to clarify that for purposes of disclosures required to be provided pursuant to § 1005.31 or .36, such disclosures provided by remittance transfer providers via fax are considered to be written disclosures for purposes subpart B of Regulation E, and are not subject to the additional requirements for electronic disclosures set forth in § 1005.31(a)(2). The Bureau believes that this proposed clarification would have no material impact on covered persons or consumers because the Bureau believes that to the extent remittance transfer providers already send fax disclosures, they treat those faxes as a ''writing.'' Similarly, the Bureau believes its proposed modification to comment 31(a)(3)–2 would conform the rule to providers' current practice and thus would have minimal impact on covered persons and consumers. As discussed above, proposed comment 31(a)(3)–2 would clarify that: (1) A provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical, and (2) that in such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to § 1005.31(a)(3) when the provider treats that initial communication as an inquiry and responds to the inquiry by telephone and orally gathers or confirms the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

The Bureau is additionally proposing that remittance transfer providers may satisfy the requirement in § 1005.31(b)(2)(vi) to disclose the Bureau's Web site on the receipts they provide to consumers by listing the Web site that is the address of a page on the Bureau's Web site that provides information about remittance transfers, and that providers making foreign language disclosures pursuant to § 1005 31(g) may disclose the Web site of the Bureaus homepage that is in the relevant language, if that Web site exists. Although the Remittance Rule does not specify which Bureau Web site

would be provided on receipts, the Model Forms published by the Bureau all listed the Bureau's internet homepage. Insofar as this proposed change would expand providers' options with respect to meeting the requirement in § 1005.31(b)(2)(vi) to disclose the Web site of the Bureau, but not require them to alter their current receipts, the Bureau does not believe that the proposed change would impose costs on providers, unless providers voluntarily choose to adjust their receipts. If some consumers would receive disclosures with these more specific Bureau Web sites if the Bureau adopts this proposed change, the Bureau believes that those consumers may benefit from receiving more direct access to relevant Bureau resources about their rights under the Remittance Rule.

Finally, the Bureau believes that the proposed changes to the error resolution provisions in § 1005.33 would also not materially alter the costs or benefits of the rule to covered persons and consumers. The Bureau believes that the proposed clarification that § 1005.33(a)(1)(iv)(B) would only apply to individualized investigations or other special actions by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, Office of Foreign Assets Control requirements, or similar laws or requirements and the addition of comment 33(a)–7 would conform the rule to its intended scope, and is consistent with the current understanding of this exception.

With respect to the proposed changes to § 1005.33(c)(2)(iii) regarding how to provide remedies for errors under § 1005.33(a)(1)(iv) (failure to make funds available to the designated recipient by the disclosed date of availability) because the sender provided incorrect or insufficient information in connection with the remittance transfer, the Bureau believes that remittance providers are not deducting their own fees when remedying the error. Current comment 33(c)–12 explains the types of fees that a provider may deduct, and they do not include the provider's own fees. Indeed, an illustration is provided in comment 33(c)–12.i. (a remittance transfer provider imposes a US$10 fee on a remittance transfer, and its correspondent imposes a US$15 fee, an error under § 1005.33(a)(1)(iv) is determined to have occurred, the provider is required to refund its $10 fee). Accordingly, the Bureau does not believe that there would be a material impact from this provision.

Lastly, the Bureau is proposing to add to comment 33(c)–5 with an example that would illustrate what is meant by the explanation set forth in the comment with respect to the amount appropriate to resolve the error for purposes of certain remedies set forth in rule. The Bureau does not believe that there will be a material impact, because the proposed addition would not alter the current explanation and impact the amount consumers would receive as the amount appropriate to resolve the error. The Bureau believes that the proposed addition may have a small beneficial impact because it would add clarity to the existing commentary.

C. Access to Consumer Financial Products and Services

The Bureau expects that the proposal generally would not decrease consumers' access to consumer financial products and services. By extending the temporary exception, the proposal could preserve consumers' current set of options for sending remittance transfers to destinations for which insured institutions avail themselves of the temporary exception, compared to a market in which the temporary exception has expired, and some remittance transfer providers has stopped providing services to some destinations, particularly if many providers use the exception to send remittance transfers to the same destinations. Additionally, by facilitating insured institutions' continued participation in the segment of the market for which they avail themselves of the temporary exception, the proposal could preserve competition. As discussed above, the Bureau seeks comments in particular on the relative costs and benefits of the proposal to clarify the application of the Remittance Rule to transfers sent to and from locations on U.S. military installations abroad. The Bureau also invites comment on its potential impact on consumer access to consumer financial product and services.

D. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets

As discussed above, the Bureau understands that with regard to remittance transfers sent from accounts, the majority of insured institutions that are remittance transfer providers obtain information about exchange rates and covered third-party fees from a limited number of service providers that are either very large insured institutions or large nonbank service providers. The Bureau believes that this would apply to depository institutions and credit unions with $10 billion or less in total assets. Given that reliance, the nature of the impacts on these institutions would likely be similar to the effects on larger depository institutions.

The specific impacts of the proposed extension on depository institutions and credit unions would depend on a number of factors, including whether they are remittance transfer providers, the importance of remittance transfers for the institutions, the methods that the insured institutions use to send remittance transfers, and the number of institutions or countries to which they send remittance transfers. Information that the Bureau obtained during prior remittance rulemaking efforts and the NCUA Call Report data discussed above suggest that among depository institutions and credit unions that provide any remittance transfers, an institution's asset size and the number of remittance transfers sent by the institution are positively, though imperfectly, related. The Bureau therefore expects that among depository institutions and credit unions with $10 billion or less in total assets that provide any remittance transfers, compared to larger such institutions, a greater share will qualify for the safe harbor related to the definition of ''remittance transfer provider'' and therefore would be entirely unaffected by the proposed extension because they are not subject to the requirements of the 2013 Final Rule. *See* § 1005.30(f)(2).

E. Impact of the Proposal on Consumers in Rural Areas

Senders in rural areas may experience different impacts from the proposal than other senders. The Bureau does not have data with which to analyze these impacts in detail. However, to the extent that the proposal leads more remittance transfer providers to continue to provide remittance transfer services, the proposal may disproportionately benefit senders living in rural areas. Senders in rural areas may have fewer options for sending remittance transfers, and therefore may benefit more than other senders from a change that keeps more providers in the market. The Bureau does not expect that any of its other proposed changes would have a material impact on consumers in rural areas.

F. Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposal before finalizing this proposal. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed above in the Section-by-Section

Analysis and this part. This includes comment or data regarding the number and characteristics of affected entities and consumers; providers' current practices and how this proposal might change their current practices or their planned practices under the 2013 Final Rule; and any other portions of this analysis.

The Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. Further, the Bureau seeks information or data on the proposed rule's potential impact on consumers in rural areas as compared to consumers in urban areas. The Bureau also seeks information or data on the potential impact of the proposed rule on depository institutions and credit unions with total assets of $10 billion or less as described in Dodd-Frank Act section 1026 as compared to depository institutions and credit unions with assets that exceed this threshold and their affiliates.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[36] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[37]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[38] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[39]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau believes that the extension of the temporary exception would not impose a cost on any insured institutions, because the extension would not require them to alter current practices but instead maintain the status quo. With regard to the proposed clarifications and technical corrections with respect the treatment of transfers sent from non-consumer accounts, the treatment of faxes, when a provider may treat a communication regarding a potential remittance transfer as an inquiry, the Web site addresses to be disclosed on consumer receipts, and error resolution provisions related to delays and remedies, the Bureau does not believe that any of the proposed provisions would have any material cost impact on any remittance providers for the reasons stated in the Section 1022(b)(2) Analysis.

With respect to the proposal to clarify the treatment of U.S. military installations located in foreign countries, the Bureau believes that remittance transfer providers that are small entities would not be significantly impacted. As discussed above, there is a potential for confusion with respect to when the Remittance Rule applies to transfers to and from locations on U.S. military installations abroad. If locations on U.S. military installations abroad are treated as being in a State, the Remittance Rule would apply to transfers from locations on installations to locations in foreign countries, but would not apply to transfers from locations in a State to locations on installations. If, in the alternative, locations on U.S. military installations abroad are not treated as being in a State, the Remittance Rule would not apply to transfers from locations on installations to locations in foreign countries, but would apply to transfers from locations in a State to locations on installations.

Depending on current practice, each approach could impose additional costs on some entities with respect to some transfers (*i.e.,* by applying the Remittance Rule to transfers to which the rule is not currently being applied), and relieve burdens on some entities with respect to some other transfers (*i.e.,* by clarifying that the Remittance Rule does not apply to transfers to which it is currently being applied).

As noted above, the Bureau lacks data on the relative impacts of the approaches to clarifying the application of the Remittance Rule. However, the Bureau does not believe that the impacts would be large enough to cause a significant economic impact on a substantial number of small entities for at least three reasons. First, for transfers to and from the accounts of persons stationed on U.S. military bases abroad, the Remittance Rule provides that the determination of whether or not the rule applies depends on the location of the account, rather than the account owner's physical location at the time of transfer. *See* comment 30(c)–2.ii (whether location is in a foreign country); comment 30(g) (whether consumer is located in a State). Based on the Bureau's outreach to date, the Bureau believes that many servicemembers and other consumers stationed at U.S. military bases abroad opened their accounts in the United States. Accordingly, the Bureau believes that the impact of a potential clarification on account-based transfers should be relatively limited.

Second, the Bureau notes that either approach would likely have the burden-relieving effect of clarifying the application of the rule. Third, the Bureau does not believe that a substantial number of small entities send transfers to and from locations on U.S. military bases. For such transactions, the small entity would have to be located on the installation (for transfers from locations on the installation) or, for most such transactions that not are account-based, have an agent on the installation (for transfers to locations on the installation). The Bureau believes that remittance transfer providers that are small entities generally do not have such locations or agent networks.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposed rule on small entities and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (PRA), the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. Regulation E, 12 CFR 1005, currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170–0014.

With the exception of the proposal to clarify the application of the Remittance Rule to transfers sent from locations on U.S. military installations abroad, the Bureau does not believe that any of the proposed changes to Remittance Rule

[36] 5 U.S.C. 601, *et seq.* The Bureau is not aware of any small governmental units or not-for-profit organizations to which the proposal would apply.

[37] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[38] 5 U.S.C. 603–605.

[39] 5 U.S.C. 609.

set forth in this proposal would have a material impact on the Bureau's current collections of information pursuant to Regulation E approved by the Office of Management and Budget (OMB) under section 3507(d) of the PRA. With respect to the proposal to clarify the application of the Remittance Rule to transfers sent from locations on U.S. military installations abroad, the Bureau lacks data about current practice and thus is unable to determine the potential impact of the proposed modification on the Bureau's current collection of information pursuant to Regulation E. Other than this aspect of the proposal, there are no new collections of information in this proposal that are subject to the PRA that could potentially amend current collections of information pursuant to Regulation E that have been previously submitted to and approved by OMB.

Comments are specifically requested concerning information that would assist the Bureau with making a determination on the impact of clarifying the application of the Remittance Rule to transfers sent from locations on U.S. military installations abroad on the Bureau's current collection of information pursuant to Regulation E, and whether the determination that the rest of the changes to the Remittance Rule in this proposal would not have a material impact on the Bureau's current collections of information pursuant to Regulation E approved by OMB is correct. Comments should be submitted as outlined in the **ADDRESSES** section above. All comments will become a matter of public record.

List of Subjects in 12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend 12 CFR part 1005 as follows:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601.

Subpart B—Requirements for Remittance Transfers

■ 2. Amend § 1005.32 by revising paragraph (a)(2) to read as follows:

§ 1005.32 Estimates.

(a) * * *

(2) Paragraph (a)(1) of this section expires on July 21, 2020.

* * * * *

■ 3. Amend § 1005.33 by revising paragraphs (a)(1)(iv)(B) and (c)(2)(iii) to read as follows:

§ 1005.33 Procedures for Resolving Errors.

(a) * * *

(1) * * *

(iv) * * *

(B) Delays related to individualized investigation or other special action by the remittance transfer provider or a third party as required by the provider's fraud screening procedures or in accordance with the Bank Secrecy Act, 31 U.S.C. 5311 *et seq.,* Office of Foreign Assets Control requirements, or similar laws or requirements;

* * * * *

(c) * * *

(2) * * *

(iii) In the case of an error under paragraph (a)(1)(iv) of this section that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by paragraphs (c)(2)(ii)(A)(*1*) and (c)(2)(ii)(B) of this section within three business days of providing the report required by paragraph (c)(1) or (d)(1) of this section except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund. The provider may deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt except that the provider shall not deduct its own fee.

■ 4. In Supplement I to Part 1005:

■ a. Under *Section 1005.30—Remittance Transfer Definitions:*

■ i. Under *Paragraph 30(g),* paragraph 2 is added.

■ b. Under *Section 1005.31—Disclosures:*

■ i. Under *Paragraph 31(a)(2),* paragraph 5 is added.

■ ii. Under *Paragraph 31(a)(3),* paragraph 1 is revised.

■ iii. Under *Paragraph 31(a)(3),* paragraph 2 is revised.

■ iv. Under *Paragraph 31(b)(2),* paragraphs 4, 5, 6 are redesignated as paragraphs 5, 6, and 7.

■ v. Under *Paragraph 31(b)(2),* paragraph 4 is added.

■ vi. Under *Paragraph 31(e)(2),* paragraph 1 is revised.

■ c. Under *Section 1005.33—Procedures for Resolving Errors:*

■ i. Under *Paragraph 33(a),* paragraphs 7, 8, 9, 10 are redesignated as paragraphs 8, 9, 10, and 11.

■ ii. Under *Paragraph 33(a),* new paragraph 7 is added.

■ iii. Under *Paragraph 33(c),* paragraph 5 is added.

The revisions and additions read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.30—Remittance Transfer Definitions

* * * * *

30(g) Sender

1. * * *

2. *Personal, family, or household purposes.* Under § 1005.30(g), a consumer is a ''sender'' only where he or she requests a transfer primarily for personal, family, or household purposes. A consumer who requests a transfer primarily for other purposes, such as business or commercial purposes, is not a sender under § 1005.30(g). For transfers from an account, the primary purpose for which the account was established determines whether a transfer from that account is requested for personal, family, or household purposes. A transfer that is sent from an account that is not used primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account owned by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g).

Section 1005.31—Disclosures

31(a) General Form of Disclosures

31(a)(2) Written and Electronic Disclosures

* * * * *

■ 5. *Disclosures provided by fax.* For purposes of disclosures required to be provided pursuant to § 1005.31 or .36, disclosures provided by facsimile transmission (*i.e.,* fax) are considered to be provided in writing for purposes of providing disclosures in writing pursuant to subpart B and are not

subject to the requirements for electronic disclosures set forth in § 1005.31(a)(2).

* * * * *

31(a)(3) Disclosures for Oral Telephone Transactions

* * * * *

1. *Transactions conducted partially by telephone.* Except as provided in comment 31(a)(3)–2, for transactions conducted partially by telephone, providing the information required by § 1005.31(b)(1) to a sender orally does not fulfill the requirement to provide the disclosures required by § 1005.31(b)(1). For example, a sender may begin a remittance transfer at a remittance transfer provider's dedicated telephone in a retail store, and then provide payment in person to a store clerk to complete the transaction. In such cases, all disclosures must be provided in writing. A provider complies with this requirement, for example, by providing the written pre-payment disclosure in person prior to the sender's payment for the transaction, and the written receipt when the sender pays for the transaction.

2. *Oral telephone transactions.* Section 1005.31(a)(3) applies to transactions conducted orally and entirely by telephone, such as transactions conducted orally on a landline or mobile telephone. A remittance transfer provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical. For example, if a sender physically located abroad contacts a U.S. branch of the sender's financial institution and attempts to initiate a remittance transfer by first sending a mailed letter, further communication with the sender by letter may be impractical due to the physical distance and likely mail delays. In such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to § 1005.31(a)(3) when the provider treats that initial communication as an inquiry and subsequently responds to the consumer's inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

* * * * *

31(b) Disclosure Requirements

31(b)(2) Receipt

* * * * *

4. *Web site of the Consumer Financial Protection Bureau.* Section 1005.31(b)(2)(vi) requires a remittance transfer provider to disclose the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau. Providers may satisfy this requirement by disclosing the Web site of the Consumer Financial Protection Bureau's homepage, *www.consumerfinance.gov,* as shown on Model Forms A–31, A–32, A–34, A–35, A–39, and A–40 of appendix A. Alternatively, providers may, but are not required to, disclose the Bureau's Web site as the address of a page on the Bureau's Web site that provides information for consumers about remittance transfers, currently, *www.consumerfinance.gov/sending-money.* In addition, providers making disclosures in a language other than English pursuant to § 1005.31(g) may, but are not required to, disclose the Bureau's Web site as a page on the Bureau's Web site that provides information for consumers about remittance transfers in the relevant language, if such Web site exists. For example, a provider that is making disclosures in Spanish under § 1005.31(g) may, but is not required to, disclose the Bureau's Web site on Spanish-language disclosures as the page on the Bureau's Web site that provides information regarding remittance transfers in Spanish, currently *www.consumerfinance.gov/enviar-dinero.*

* * * * *

7. * * *

31(e) Timing

1. *Request to send a remittance transfer.* Except as provided in § 1005.36(a), pre-payment and combined disclosures are required to be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer. Whether a consumer has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. For example, a sender that has sent an email, fax, mailed letter, or similar written or electronic communication has not requested a remittance transfer if the provider believes that it is impractical for the provider to treat that communication as a request and if the provider treats the communication as an inquiry and subsequently responds to that inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to process a request for a remittance transfer. *See* comment 31(a)(3)–2. Likewise, a consumer who solely inquires about that day's rates and fees to send to Mexico has not requested the provider to send a remittance transfer. Conversely, a sender who asks the provider at an agent location to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested a remittance transfer.

* * * * *

Section 1005.33 Procedures for Resolving Errors

33(a) Definition of Error

* * * * *

7. *Failure to make funds available by disclosed date of availability—fraud and other screening procedures.* Under § 1005.33(a)(1)(iv)(B), a remittance transfer provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability is not an error if such failure was caused by a delay related to the provider's or any third party's necessary investigation or other special action necessary to address potentially suspicious, blocked or prohibited activity in accordance with the Bank Secrecy Act, 31 U.S.C. 5311, *et seq.,* Office of Foreign Assets Control requirements, or similar laws or requirements. For example, no error occurs if delivery of funds is delayed because the provider's fraud screening system flags a remittance transfer because the designated recipient has a name similar to the name of a blocked person under a sanctions program and further investigation is needed to determine that the designated recipient is not actually a blocked person. Similarly, no error occurs if delivery of funds is delayed because the correspondent bank to which the provider forwards the remittance transfer identifies the transfer as similar to previous fraudulent activity and action by a correspondent or the provider is necessary to proceed. However, if a delay is caused by ordinary fraud or other screening procedures, where no potentially fraudulent, suspicious, blocked or prohibited activity is identified and no further investigation or action is required, the exception in § 1005.33(a)(1)(iv)(B) would not apply.

* * * * *

11. * * *

33(c) Time Limits and Extent of Investigation

* * * * *

5. *Amount appropriate to resolve the error.* For purposes of the remedies set forth in § 1005.33(c)(2)(i)(A) and (B), (c)(2)(ii)(A)(*1*), and (*2*) the amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had been effected without error. The amount appropriate to resolve the error does not include consequential damages. For example, when the amount that was disclosed pursuant to § 1005.31(b)(1)(vii) was received by the designated recipient before the provider must determine the appropriate remedy for an error under § 1005.33(a)(1)(iv), no additional amounts are required to resolve the error after the remittance transfer provider refunds the appropriate fees and taxes paid by the sender pursuant to § 1005.33(c)(2)(ii)(B) or (c)(2)(iii), as applicable.

* * * * *

Dated: April 14, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–09036 Filed 4–24–14; 8:45 am]

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